

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 3915  
OFFERED BY MR. FRANK OF MASSACHUSETTS,  
MR. BACHUS, MR. MILLER OF NORTH CARO-  
LINA, MR. WATT, MRS. BIGGERT, MRS.  
CAPITO, MS. PRYCE OF OHIO, AND MR.  
LATOURETTE**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Mortgage Reform and Anti-Predatory Lending Act of  
4 2007”.

5 (b) TABLE OF CONTENTS.—The table of contents for  
6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—RESIDENTIAL MORTGAGE LOAN ORIGINATION

Subtitle A—Licensing System for Residential Mortgage Loan Originators

Sec. 101. Purposes and methods for establishing a mortgage licensing system and registry.

Sec. 102. Definitions.

Sec. 103. License or registration required.

Sec. 104. State license and registration application and issuance.

Sec. 105. Standards for State license renewal.

Sec. 106. System of registration administration by Federal banking agencies.

Sec. 107. Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system.

Sec. 108. Backup authority to establish a nationwide mortgage licensing and registry system.

- Sec. 109. Fees.
- Sec. 110. Background checks of loan originators.
- Sec. 111. Confidentiality of information.
- Sec. 112. Liability provisions.
- Sec. 113. Enforcement under HUD backup licensing system.

#### Subtitle B—Residential Mortgage Loan Origination Standards

- Sec. 121. Definitions.
- Sec. 122. Residential mortgage loan origination.
- Sec. 123. Anti-steering.
- Sec. 124. Liability.
- Sec. 125. Regulations.

#### TITLE II—MINIMUM STANDARDS FOR MORTGAGES

- Sec. 201. Ability to repay.
- Sec. 202. Net tangible benefit for refinancing of residential mortgage loans.
- Sec. 203. Safe harbor and rebuttable presumption.
- Sec. 204. Liability.
- Sec. 205. Defense to foreclosure.
- Sec. 206. Additional standards and requirements.
- Sec. 207. Rule of construction.
- Sec. 208. Effect on State laws.
- Sec. 209. Regulations.
- Sec. 210. Amendments to civil liability provisions.

#### TITLE III—HIGH-COST MORTGAGES

- Sec. 301. Definitions relating to high-cost mortgages.
- Sec. 302. Amendments to existing requirements for certain mortgages.
- Sec. 303. Additional requirements for certain mortgages.
- Sec. 304. Amendment to provision governing correction of errors.
- Sec. 305. Regulations.

#### TITLE IV—OFFICE OF HOUSING COUNSELING

- Sec. 401. Short title.
- Sec. 402. Establishment of Office of Housing Counseling.
- Sec. 403. Counseling procedures.
- Sec. 404. Grants for housing counseling assistance.
- Sec. 405. Requirements to use HUD-certified counselors under HUD programs.
- Sec. 406. Study of defaults and foreclosures.
- Sec. 407. Definitions for counseling-related programs.
- Sec. 408. Updating and simplification of mortgage information booklet.

1           **TITLE I—RESIDENTIAL**  
2           **MORTGAGE LOAN ORIGINATION**  
3           **Subtitle A—Licensing System for**  
4           **Residential Mortgage Loan**  
5           **Originators**

6           **SEC. 101. PURPOSES AND METHODS FOR ESTABLISHING A**  
7                           **MORTGAGE LICENSING SYSTEM AND REG-**  
8                           **ISTRY.**

9           In order to increase uniformity, reduce regulatory  
10          burden, enhance consumer protection, and reduce fraud,  
11          the States, through the Conference of State Bank Super-  
12          visors and the American Association of Residential Mort-  
13          gage Regulators, are hereby encouraged to establish a Na-  
14          tionwide Mortgage Licensing System and Registry for the  
15          residential mortgage industry that accomplishes all of the  
16          following objectives:

17                   (1) Provides uniform license applications and  
18                   reporting requirements for State-licensed loan origi-  
19                   nators.

20                   (2) Provides a comprehensive licensing and su-  
21                   pervisory database.

22                   (3) Aggregates and improves the flow of infor-  
23                   mation to and between regulators.

24                   (4) Provides increased accountability and track-  
25                   ing of loan originators.

1           (5) Streamlines the licensing process and re-  
2           duces the regulatory burden.

3           (6) Enhances consumer protections and sup-  
4           ports anti-fraud measures.

5           (7) Provides consumers with easily accessible  
6           information regarding the employment history of,  
7           and publicly adjudicated disciplinary and enforce-  
8           ment actions against, loan originators.

9   **SEC. 102. DEFINITIONS.**

10          For purposes of this subtitle, the following definitions  
11          shall apply:

12           (1) **FEDERAL BANKING AGENCIES.**—The term  
13           “Federal banking agencies” means the Board of  
14           Governors of the Federal Reserve System, the  
15           Comptroller of the Currency, the Director of the Of-  
16           fice of Thrift Supervision, the National Credit Union  
17           Administration, and the Federal Deposit Insurance  
18           Corporation.

19           (2) **DEPOSITORY INSTITUTION.**—The term “de-  
20           pository institution” has the same meaning as in  
21           section 3 of the Federal Deposit Insurance Act and  
22           includes any credit union.

23           (3) **LOAN ORIGINATOR.**—

24           (A) **IN GENERAL.**—The term “loan origi-  
25           nator”—

- 1 (i) means an individual who—
- 2 (I) takes a residential mortgage
- 3 loan application;
- 4 (II) assists a consumer in obtain-
- 5 ing or applying to obtain a residential
- 6 mortgage loan; or
- 7 (III) offers or negotiates terms of
- 8 a residential mortgage loan, for direct
- 9 or indirect compensation or gain, or in
- 10 the expectation of direct or indirect
- 11 compensation or gain;
- 12 (ii) includes any individual who rep-
- 13 resents to the public, through advertising
- 14 or other means of communicating or pro-
- 15 viding information (including the use of
- 16 business cards, stationery, brochures,
- 17 signs, rate lists, or other promotional
- 18 items), that such individual can or will pro-
- 19 vide or perform any of the activities de-
- 20 scribed in clause (i); and
- 21 (iii) does not include any individual
- 22 who performs purely administrative or cler-
- 23 ical tasks and is not otherwise described in
- 24 this subparagraph.

1 (B) OTHER DEFINITIONS RELATING TO  
2 LOAN ORIGINATOR.—For purposes of this sub-  
3 section, an individual “assists a consumer in  
4 obtaining or applying to obtain a residential  
5 mortgage loan” by, among other things, advis-  
6 ing on loan terms (including rates, fees, other  
7 costs), preparing loan packages, or collecting in-  
8 formation on behalf of the consumer with re-  
9 gard to a residential mortgage loan.

10 (C) ADMINISTRATIVE OR CLERICAL  
11 TASKS.—The term “administrative or clerical  
12 tasks” means the receipt, collection, and dis-  
13 tribution of information common for the proc-  
14 essing or underwriting of a loan in the mort-  
15 gage industry and communication with a con-  
16 sumer to obtain information necessary for the  
17 processing or underwriting of a residential  
18 mortgage loan.

19 (4) LOAN PROCESSOR OR UNDERWRITER.—

20 (A) IN GENERAL.—The term “loan proc-  
21 essor or underwriter” means an individual who  
22 performs clerical or support duties at the direc-  
23 tion of and subject to the supervision and in-  
24 struction of—

25 (i) a State-licensed loan originator; or

1 (ii) a registered loan originator.

2 (B) CLERICAL OR SUPPORT DUTIES.—For  
3 purposes of subparagraph (A), the term “cler-  
4 ical or support duties” may include—

5 (i) the receipt, collection, distribution,  
6 and analysis of information common for  
7 the processing or underwriting of a resi-  
8 dential mortgage loan; and

9 (ii) communicating with a consumer  
10 to obtain the information necessary for the  
11 processing or underwriting of a loan, to the  
12 extent that such communication does not  
13 include offering or negotiating loan rates  
14 or terms, or counseling consumers about  
15 residential mortgage loan rates or terms.

16 (5) NATIONWIDE MORTGAGE LICENSING SYS-  
17 TEM AND REGISTRY.—The term “Nationwide Mort-  
18 gage Licensing System and Registry” means a mort-  
19 gage licensing system developed and maintained by  
20 the Conference of State Bank Supervisors and the  
21 American Association of Residential Mortgage Regu-  
22 lators for the State licensing and registration of  
23 State-licensed loan originators and the registration  
24 of registered loan originators or any system estab-  
25 lished by the Secretary under section 108.

1           (6) REGISTERED LOAN ORIGINATOR.—The term  
2           “registered loan originator” means any individual  
3           who—

4                   (A) meets the definition of loan originator  
5                   and is an employee of a depository institution  
6                   or a subsidiary of a depository institution; and

7                   (B) is registered with, and maintains a  
8                   unique identifier through, the Nationwide Mort-  
9                   gage Licensing System and Registry.

10           (7) RESIDENTIAL MORTGAGE LOAN.—The term  
11           “residential mortgage loan” means any loan pri-  
12           marily for personal, family, or household use that is  
13           secured by a mortgage, deed of trust, or other equiv-  
14           alent consensual security interest on a dwelling (as  
15           defined in section 103(v) of the Truth in Lending  
16           Act) or residential real estate upon which is con-  
17           structed or intended to be constructed a dwelling (as  
18           so defined).

19           (8) SECRETARY.—The term “Secretary” means  
20           the Secretary of Housing and Urban Development.

21           (9) STATE-LICENSED LOAN ORIGINATOR.—The  
22           term “State-licensed loan originator” means any in-  
23           dividual who—

24                   (A) is a loan originator;

1 (B) is not an employee of a depository in-  
2 stitution or any subsidiary of a depository insti-  
3 tution; and

4 (C) is licensed by a State or by the Sec-  
5 retary under section 107 and registered as a  
6 loan originator with, and maintains a unique  
7 identifier through, the Nationwide Mortgage Li-  
8 censing System and Registry.

9 (10) UNIQUE IDENTIFIER.—The term “unique  
10 identifier” means a number or other identifier  
11 that—

12 (A) permanently identifies a loan origi-  
13 nator; and

14 (B) is assigned by protocols established by  
15 the Nationwide Mortgage Licensing System and  
16 Registry and the Federal banking agencies to  
17 facilitate electronic tracking of loan originators  
18 and uniform identification of, and public access  
19 to, the employment history of and the publicly  
20 adjudicated disciplinary and enforcement ac-  
21 tions against loan originators.

22 **SEC. 103. LICENSE OR REGISTRATION REQUIRED.**

23 (a) IN GENERAL.—An individual may not engage in  
24 the business of a loan originator without first—

25 (1) obtaining and maintaining—

1 (A) a registration as a registered loan  
2 originator; or

3 (B) a license and registration as a State-  
4 licensed loan originator; and

5 (2) obtaining a unique identifier.

6 (b) LOAN PROCESSORS AND UNDERWRITERS.—

7 (1) SUPERVISED LOAN PROCESSORS AND UN-  
8 DERWRITERS.—A loan processor or underwriter who  
9 does not represent to the public, through advertising  
10 or other means of communicating or providing infor-  
11 mation (including the use of business cards, sta-  
12 tionery, brochures, signs, rate lists, or other pro-  
13 motional items), that such individual can or will per-  
14 form any of the activities of a loan originator shall  
15 not be required to be a State-licensed loan originator  
16 or a registered loan originator.

17 (2) INDEPENDENT CONTRACTORS.—A loan  
18 processor or underwriter may not work as an inde-  
19 pendent contractor unless such processor or under-  
20 writer is a State-licensed loan originator or a reg-  
21 istered loan originator.

22 **SEC. 104. STATE LICENSE AND REGISTRATION APPLICA-**  
23 **TION AND ISSUANCE.**

24 (a) BACKGROUND CHECKS.—In connection with an  
25 application to any State for licensing and registration as

1 a State-licensed loan originator, the applicant shall, at a  
2 minimum, furnish to the Nationwide Mortgage Licensing  
3 System and Registry information concerning the appli-  
4 cant's identity, including—

5 (1) fingerprints for submission to the Federal  
6 Bureau of Investigation, and any governmental  
7 agency or entity authorized to receive such informa-  
8 tion for a State and national criminal history back-  
9 ground check; and

10 (2) personal history and experience, including  
11 authorization for the System to obtain—

12 (A) an independent credit report obtained  
13 from a consumer reporting agency described in  
14 section 603(p) of the Fair Credit Reporting  
15 Act; and

16 (B) information related to any administra-  
17 tive, civil or criminal findings by any govern-  
18 mental jurisdiction.

19 (b) **ISSUANCE OF LICENSE.**—The minimum stand-  
20 ards for licensing and registration as a State-licensed loan  
21 originator shall include the following:

22 (1) The applicant has not had a loan originator  
23 or similar license revoked in any governmental juris-  
24 diction during the 5-year period immediately pre-  
25 ceding the filing of the present application.

1           (2) The applicant has not been convicted, pled  
2 guilty or nolo contendere in a domestic, foreign, or  
3 military court of a felony during the 7-year period  
4 immediately preceding the filing of the present appli-  
5 cation.

6           (3) The applicant has demonstrated financial  
7 responsibility, character, and general fitness such as  
8 to command the confidence of the community and to  
9 warrant a determination that the loan originator will  
10 operate honestly, fairly, and efficiently within the  
11 purposes of this subtitle.

12           (4) The applicant has completed the pre-licens-  
13 ing education requirement described in subsection  
14 (c).

15           (5) The applicant has passed a written test that  
16 meets the test requirement described in subsection  
17 (d).

18           (c) PRE-LICENSING EDUCATION OF LOAN ORIGINA-  
19 TORS.—

20           (1) MINIMUM EDUCATIONAL REQUIREMENTS.—  
21 In order to meet the pre-licensing education require-  
22 ment referred to in subsection (b)(4), a person shall  
23 complete at least 20 hours of education approved in  
24 accordance with paragraph (2), which shall include

1 at least 3 hours of Federal law and regulations and  
2 3 hours of ethics.

3 (2) APPROVED EDUCATIONAL COURSES.—For  
4 purposes of paragraph (1), pre-licensing education  
5 courses shall be reviewed, approved and published by  
6 the Nationwide Mortgage Licensing System and  
7 Registry.

8 (d) TESTING OF LOAN ORIGINATORS.—

9 (1) IN GENERAL.—In order to meet the written  
10 test requirement referred to in subsection (b)(5), an  
11 individual shall pass, in accordance with the stand-  
12 ards established under this subsection, a qualified  
13 written test developed and administered by the Na-  
14 tionwide Mortgage Licensing System and Registry.

15 (2) QUALIFIED TEST.—A written test shall not  
16 be treated as a qualified written test for purposes of  
17 paragraph (1) unless—

18 (A) the test consists of a minimum of 100  
19 questions; and

20 (B) the test adequately measures the appli-  
21 cant's knowledge and comprehension in appro-  
22 priate subject areas, including—

23 (i) ethics;

24 (ii) Federal law and regulation per-  
25 taining to mortgage origination; and

1 (iii) State law and regulation per-  
2 taining to mortgage origination.

3 (3) MINIMUM COMPETENCE.—

4 (A) PASSING SCORE.—An individual shall  
5 not be considered to have passed a qualified  
6 written test unless the individual achieves a test  
7 score of not less than 75 percent correct an-  
8 swers to questions.

9 (B) INITIAL RETESTS.—An individual may  
10 retake a test 3 consecutive times with each con-  
11 secutive taking occurring in less than 14 days  
12 after the preceding test.

13 (C) SUBSEQUENT RETESTS.—After 3 con-  
14 secutive tests, an individual shall wait at least  
15 14 days before taking the test again.

16 (D) RETEST AFTER LAPSE OF LICENSE.—  
17 A State-licensed loan originator who fails to  
18 maintain a valid license for a period of 5 years  
19 or longer shall retake the test, not taking into  
20 account any time during which such individual  
21 is a registered loan originator.

22 **SEC. 105. STANDARDS FOR STATE LICENSE RENEWAL.**

23 (a) IN GENERAL.—The minimum standards for li-  
24 cense renewal for State-licensed loan originators shall in-  
25 clude the following:

1           (1) The loan originator continues to meet the  
2           minimum standards for license issuance.

3           (2) The loan originator has satisfied the annual  
4           continuing education requirements described in sub-  
5           section (b).

6           (b) CONTINUING EDUCATION FOR STATE-LICENSED  
7           LOAN ORIGINATORS.—

8           (1) IN GENERAL.—In order to meet the annual  
9           continuing education requirements referred to in  
10          subsection (a)(2), a State-licensed loan originator  
11          shall complete at least 8 hours of education ap-  
12          proved in accordance with paragraph (2), which  
13          shall include at least 3 hours of Federal law and  
14          regulations and 2 hours of ethics.

15          (2) APPROVED EDUCATIONAL COURSES.—For  
16          purposes of paragraph (1), continuing education  
17          courses shall be reviewed, approved, and published  
18          by the Nationwide Mortgage Licensing System and  
19          Registry.

20          (3) CALCULATION OF CONTINUING EDUCATION  
21          CREDITS.—A State-licensed loan originator—

22                 (A) may only receive credit for a con-  
23                 tinuing education course in the year in which  
24                 the course is taken; and

1 (B) may not take the same approved  
2 course in the same or successive years to meet  
3 the annual requirements for continuing edu-  
4 cation.

5 (4) INSTRUCTOR CREDIT.—A State-licensed  
6 loan originator who is approved as an instructor of  
7 an approved continuing education course may receive  
8 credit for the originator's own annual continuing  
9 education requirement at the rate of 2 hours credit  
10 for every 1 hour taught.

11 **SEC. 106. SYSTEM OF REGISTRATION ADMINISTRATION BY**  
12 **FEDERAL BANKING AGENCIES.**

13 (a) DEVELOPMENT.—

14 (1) IN GENERAL.—The Federal banking agen-  
15 cies shall jointly develop and maintain a system for  
16 registering employees of depository institutions or  
17 subsidiaries of depository institutions as registered  
18 loan originators with the Nationwide Mortgage Li-  
19 censing System and Registry. The system shall be  
20 implemented before the end of the 1-year period be-  
21 ginning on the date of the enactment of this Act.

22 (2) REGISTRATION REQUIREMENTS.—In con-  
23 nection with the registration of any loan originator  
24 who is an employee of a depository institution or a  
25 subsidiary of a depository institution with the Na-

1       tionwide Mortgage Licensing System and Registry,  
2       the appropriate Federal banking agency shall, at a  
3       minimum, furnish or cause to be furnished to the  
4       Nationwide Mortgage Licensing System and Reg-  
5       istry information concerning the employees's iden-  
6       tity, including—

7               (A) fingerprints for submission to the Fed-  
8               eral Bureau of Investigation, and any govern-  
9               mental agency or entity authorized to receive  
10              such information for a State and national  
11              criminal history background check; and

12             (B) personal history and experience, in-  
13             cluding—

14               (i) an independent credit report ob-  
15               tained from a consumer reporting agency  
16               described in section 603(p) of the Fair  
17               Credit Reporting Act; and

18               (ii) information related to any admin-  
19               istrative, civil or criminal findings by any  
20               governmental jurisdiction.

21       (b) **UNIQUE IDENTIFIER.**—The Federal banking  
22       agencies, through the Financial Institutions Examination  
23       Council, shall coordinate with the Nationwide Mortgage  
24       Licensing System and Registry to establish protocols for  
25       assigning a unique identifier to each registered loan origi-

1 nator that will facilitate electronic tracking and uniform  
2 identification of, and public access to, the employment his-  
3 tory of and publicly adjudicated disciplinary and enforce-  
4 ment actions against loan originators.

5 (c) CONSIDERATION OF FACTORS AND PROCE-  
6 DURES.—In establishing the registration procedures under  
7 subsection (a) and the protocols for assigning a unique  
8 identifier to a registered loan originator, the Federal bank-  
9 ing agencies shall make such de minimis exceptions as  
10 may be appropriate to paragraphs (1)(A) and (2) of sec-  
11 tion 103(a), shall make reasonable efforts to utilize exist-  
12 ing information to minimize the burden of registering loan  
13 originators, and shall consider methods for automating the  
14 process to the greatest extent practicable consistent with  
15 the purposes of this subtitle.

16 **SEC. 107. SECRETARY OF HOUSING AND URBAN DEVELOP-**  
17 **MENT BACKUP AUTHORITY TO ESTABLISH A**  
18 **LOAN ORIGINATOR LICENSING SYSTEM.**

19 (a) BACK UP LICENSING SYSTEM.—If, by the end of  
20 the 1-year period, or the 2-year period in the case of a  
21 State whose legislature meets only biennially, beginning  
22 on the date of the enactment of this Act or at any time  
23 thereafter, the Secretary determines that a State does not  
24 have in place by law or regulation a system for licensing  
25 and registering loan originators that meets the require-

1 ments of sections 104 and 105 and subsection (d) or does  
2 not participate in the Nationwide Mortgage Licensing Sys-  
3 tem and Registry, the Secretary shall provide for the es-  
4 tablishment and maintenance of a system for the licensing  
5 and registration by the Secretary of loan originators oper-  
6 ating in such State as State-licensed loan originators.

7 (b) LICENSING AND REGISTRATION REQUIRE-  
8 MENTS.—The system established by the Secretary under  
9 subsection (a) for any State shall meet the requirements  
10 of sections 104 and 105 for State-licensed loan origina-  
11 tors.

12 (c) UNIQUE IDENTIFIER.—The Secretary shall co-  
13 ordinate with the Nationwide Mortgage Licensing System  
14 and Registry to establish protocols for assigning a unique  
15 identifier to each loan originator licensed by the Secretary  
16 as a State-licensed loan originator that will facilitate elec-  
17 tronic tracking and uniform identification of, and public  
18 access to, the employment history of and the publicly adju-  
19 dicated disciplinary and enforcement actions against loan  
20 originators.

21 (d) STATE LICENSING LAW REQUIREMENTS.—For  
22 purposes of this section, the law in effect in a State meets  
23 the requirements of this subsection if the Secretary deter-  
24 mines the law satisfies the following minimum require-  
25 ments:

1           (1) A State loan originator supervisory author-  
2           ity is maintained to provide effective supervision and  
3           enforcement of such law, including the suspension,  
4           termination, or nonrenewal of a license for a viola-  
5           tion of State or Federal law.

6           (2) The State loan originator supervisory au-  
7           thority ensures that all State-licensed loan origina-  
8           tors operating in the State are registered with Na-  
9           tionwide Mortgage Licensing System and Registry.

10          (3) The State loan originator supervisory au-  
11          thority is required to regularly report violations of  
12          such law, as well as enforcement actions and other  
13          relevant information, to the Nationwide Mortgage  
14          Licensing System and Registry.

15          (e) TEMPORARY EXTENSION OF PERIOD.—The Sec-  
16          retary may extend, by not more than 6 months, the 1-  
17          year or 2-year period, as the case may be, referred to in  
18          subsection (a) for the licensing of loan originators in any  
19          State under a State licensing law that meets the require-  
20          ments of sections 104 and 105 and subsection (d) if the  
21          Secretary determines that such State is making a good  
22          faith effort to establish a State licensing law that meets  
23          such requirements, license mortgage originators under  
24          such law, and register such originators with the Nation-  
25          wide Mortgage Licensing System and Registry.

1 (f) LIMITATION ON HUD-LICENSED LOAN ORIGINA-  
2 TORS.—Any loan originator who is licensed by the Sec-  
3 retary under a system established under this section for  
4 any State may not use such license to originate loans in  
5 any other State.

6 **SEC. 108. BACKUP AUTHORITY TO ESTABLISH A NATION-**  
7 **WIDE MORTGAGE LICENSING AND REGISTRY**  
8 **SYSTEM.**

9 If at any time the Secretary determines that the Na-  
10 tionwide Mortgage Licensing System and Registry is fail-  
11 ing to meet the requirements and purposes of this subtitle  
12 for a comprehensive licensing, supervisory, and tracking  
13 system for loan originators, the Secretary shall establish  
14 and maintain such a system to carry out the purposes of  
15 this subtitle and the effective registration and regulation  
16 of loan originators.

17 **SEC. 109. FEES.**

18 The Federal banking agencies, the Secretary, and the  
19 Nationwide Mortgage Licensing System and Registry may  
20 charge reasonable fees to cover the costs of maintaining  
21 and providing access to information from the Nationwide  
22 Mortgage Licensing System and Registry to the extent  
23 such fees are not charged to consumers for access such  
24 system and registry.

1 **SEC. 110. BACKGROUND CHECKS OF LOAN ORIGINATORS.**

2 (a) ACCESS TO RECORDS.—Notwithstanding any  
3 other provision of law, in providing identification and  
4 processing functions, the Attorney General shall provide  
5 access to all criminal history information to the appro-  
6 priate State officials responsible for regulating State-li-  
7 censed loan originators to the extent criminal history  
8 background checks are required under the laws of the  
9 State for the licensing of such loan originators.

10 (b) AGENT.—For the purposes of this section and in  
11 order to reduce the points of contact which the Federal  
12 Bureau of Investigation may have to maintain for pur-  
13 poses of subsection (a), the Conference of State Bank Su-  
14 pervisors or a wholly owned subsidiary may be used as  
15 a channeling agent of the States for requesting and dis-  
16 tributing information between the Department of Justice  
17 and the appropriate State agencies.

18 **SEC. 111. CONFIDENTIALITY OF INFORMATION.**

19 (a) SYSTEM CONFIDENTIALITY.—Except as other-  
20 wise provided in this section, any requirement under Fed-  
21 eral or State law regarding the privacy or confidentiality  
22 of any information or material provided to the Nationwide  
23 Mortgage Licensing System and Registry or a system es-  
24 tablished by the Secretary under section 108, and any  
25 privilege arising under Federal or State law (including the  
26 rules of any Federal or State court) with respect to such

1 information or material, shall continue to apply to such  
2 information or material after the information or material  
3 has been disclosed to the system. Such information and  
4 material may be shared with all State and Federal regu-  
5 latory officials with mortgage industry oversight authority  
6 without the loss of privilege or the loss of confidentiality  
7 protections provided by Federal and State laws.

8 (b) NONAPPLICABILITY OF CERTAIN REQUIRE-  
9 MENTS.—Information or material that is subject to a  
10 privilege or confidentiality under subsection (a) shall not  
11 be subject to—

12 (1) disclosure under any Federal or State law  
13 governing the disclosure to the public of information  
14 held by an officer or an agency of the Federal Gov-  
15 ernment or the respective State; or

16 (2) subpoena or discovery, or admission into  
17 evidence, in any private civil action or administrative  
18 process, unless with respect to any privilege held by  
19 the Nationwide Mortgage Licensing System and  
20 Registry or the Secretary with respect to such infor-  
21 mation or material, the person to whom such infor-  
22 mation or material pertains waives, in whole or in  
23 part, in the discretion of such person, that privilege.

24 (c) COORDINATION WITH OTHER LAW.—Any State  
25 law, including any State open record law, relating to the

1 disclosure of confidential supervisory information or any  
2 information or material described in subsection (a) that  
3 is inconsistent with subsection (a) shall be superseded by  
4 the requirements of such provision to the extent State law  
5 provides less confidentiality or a weaker privilege.

6 (d) PUBLIC ACCESS TO INFORMATION.—This section  
7 shall not apply with respect to the information or material  
8 relating to the employment history of, and publicly adju-  
9 dicated disciplinary and enforcement actions against, loan  
10 originators that is included in Nationwide Mortgage Li-  
11 censing System and Registry for access by the public.

12 **SEC. 112. LIABILITY PROVISIONS.**

13 The Secretary, any State official or agency, any Fed-  
14 eral banking agency, or any organization serving as the  
15 administrator of the Nationwide Mortgage Licensing Sys-  
16 tem and Registry or a system established by the Secretary  
17 under section 108, or any officer or employee of any such  
18 entity, shall not be subject to any civil action or proceeding  
19 for monetary damages by reason of the good-faith action  
20 or omission of any officer or employee of any such entity,  
21 while acting within the scope of office or employment, re-  
22 lating to the collection, furnishing, or dissemination of in-  
23 formation concerning persons who are loan originators or  
24 are applying for licensing or registration as loan origina-  
25 tors.

1 **SEC. 113. ENFORCEMENT UNDER HUD BACKUP LICENSING**  
2 **SYSTEM.**

3 (a) **SUMMONS AUTHORITY.**—The Secretary may—

4 (1) examine any books, papers, records, or  
5 other data of any loan originator operating in any  
6 State which is subject to a licensing system estab-  
7 lished by the Secretary under section 107; and

8 (2) summon any loan originator referred to in  
9 paragraph (1) or any person having possession, cus-  
10 tody, or care of the reports and records relating to  
11 such loan originator, to appear before the Secretary  
12 or any delegate of the Secretary at a time and place  
13 named in the summons and to produce such books,  
14 papers, records, or other data, and to give testi-  
15 mony, under oath, as may be relevant or material to  
16 an investigation of such loan originator for compli-  
17 ance with the requirements of this subtitle.

18 (b) **EXAMINATION AUTHORITY.**—

19 (1) **IN GENERAL.**—If the Secretary establishes  
20 a licensing system under section 107 for any State,  
21 the Secretary shall appoint examiners for the pur-  
22 poses of administering such section.

23 (2) **POWER TO EXAMINE.**—Any examiner ap-  
24 pointed under paragraph (1) shall have power, on  
25 behalf of the Secretary, to make any examination of  
26 any loan originator operating in any State which is

1 subject to a licensing system established by the Sec-  
2 retary under section 107 whenever the Secretary de-  
3 termines an examination of any loan originator is  
4 necessary to determine the compliance by the origi-  
5 nator with this subtitle.

6 (3) REPORT OF EXAMINATION.—Each examiner  
7 appointed under paragraph (1) shall make a full and  
8 detailed report of examination of any loan originator  
9 examined to the Secretary.

10 (4) ADMINISTRATION OF OATHS AND AFFIRMA-  
11 TIONS; EVIDENCE.—In connection with examinations  
12 of loan originators operating in any State which is  
13 subject to a licensing system established by the Sec-  
14 retary under section 107, or with other types of in-  
15 vestigations to determine compliance with applicable  
16 law and regulations, the Secretary and examiners  
17 appointed by the Secretary may administer oaths  
18 and affirmations and examine and take and preserve  
19 testimony under oath as to any matter in respect to  
20 the affairs of any such loan originator.

21 (5) ASSESSMENTS.—The cost of conducting any  
22 examination of any loan originator operating in any  
23 State which is subject to a licensing system estab-  
24 lished by the Secretary under section 107 shall be  
25 assessed by the Secretary against the loan originator

1 to meet the Secretary's expenses in carrying out  
2 such examination.

3 (c) CEASE AND DESIST PROCEEDING.—

4 (1) AUTHORITY OF SECRETARY.—If the Sec-  
5 retary finds, after notice and opportunity for hear-  
6 ing, that any person is violating, has violated, or is  
7 about to violate any provision of this subtitle, or any  
8 regulation thereunder, with respect to a State which  
9 is subject to a licensing system established by the  
10 Secretary under section 107, the Secretary may pub-  
11 lish such findings and enter an order requiring such  
12 person, and any other person that is, was, or would  
13 be a cause of the violation, due to an act or omission  
14 the person knew or should have known would con-  
15 tribute to such violation, to cease and desist from  
16 committing or causing such violation and any future  
17 violation of the same provision, rule, or regulation.  
18 Such order may, in addition to requiring a person to  
19 cease and desist from committing or causing a viola-  
20 tion, require such person to comply, or to take steps  
21 to effect compliance, with such provision or regula-  
22 tion, upon such terms and conditions and within  
23 such time as the Secretary may specify in such  
24 order. Any such order may, as the Secretary deems  
25 appropriate, require future compliance or steps to

1 effect future compliance, either permanently or for  
2 such period of time as the Secretary may specify,  
3 with such provision or regulation with respect to any  
4 loan originator.

5 (2) HEARING.—The notice instituting pro-  
6 ceedings pursuant to paragraph (1) shall fix a hear-  
7 ing date not earlier than 30 days nor later than 60  
8 days after service of the notice unless an earlier or  
9 a later date is set by the Secretary with the consent  
10 of any respondent so served.

11 (3) TEMPORARY ORDER.—Whenever the Sec-  
12 retary determines that the alleged violation or  
13 threatened violation specified in the notice insti-  
14 tuting proceedings pursuant to paragraph (1), or the  
15 continuation thereof, is likely to result in significant  
16 dissipation or conversion of assets, significant harm  
17 to consumers, or substantial harm to the public in-  
18 terest prior to the completion of the proceedings, the  
19 Secretary may enter a temporary order requiring the  
20 respondent to cease and desist from the violation or  
21 threatened violation and to take such action to pre-  
22 vent the violation or threatened violation and to pre-  
23 vent dissipation or conversion of assets, significant  
24 harm to consumers, or substantial harm to the pub-  
25 lic interest as the Secretary deems appropriate pend-

1       ing completion of such proceedings. Such an order  
2       shall be entered only after notice and opportunity for  
3       a hearing, unless the Secretary determines that no-  
4       tice and hearing prior to entry would be impracti-  
5       cable or contrary to the public interest. A temporary  
6       order shall become effective upon service upon the  
7       respondent and, unless set aside, limited, or sus-  
8       pended by the Secretary or a court of competent ju-  
9       risdiction, shall remain effective and enforceable  
10      pending the completion of the proceedings.

11           (4) REVIEW OF TEMPORARY ORDERS.—

12           (A) REVIEW BY SECRETARY.—At any time  
13           after the respondent has been served with a  
14           temporary cease-and-desist order pursuant to  
15           paragraph (3), the respondent may apply to the  
16           Secretary to have the order set aside, limited,  
17           or suspended. If the respondent has been served  
18           with a temporary cease-and-desist order entered  
19           without a prior hearing before the Secretary,  
20           the respondent may, within 10 days after the  
21           date on which the order was served, request a  
22           hearing on such application and the Secretary  
23           shall hold a hearing and render a decision on  
24           such application at the earliest possible time.

25           (B) JUDICIAL REVIEW.—Within—

1 (i) 10 days after the date the respond-  
2 ent was served with a temporary cease-  
3 and-desist order entered with a prior hear-  
4 ing before the Secretary; or

5 (ii) 10 days after the Secretary ren-  
6 ders a decision on an application and hear-  
7 ing under paragraph (1), with respect to  
8 any temporary cease-and-desist order en-  
9 tered without a prior hearing before the  
10 Secretary,

11 the respondent may apply to the United States  
12 district court for the district in which the re-  
13 spondent resides or has its principal place of  
14 business, or for the District of Columbia, for an  
15 order setting aside, limiting, or suspending the  
16 effectiveness or enforcement of the order, and  
17 the court shall have jurisdiction to enter such  
18 an order. A respondent served with a temporary  
19 cease-and-desist order entered without a prior  
20 hearing before the Secretary may not apply to  
21 the court except after hearing and decision by  
22 the Secretary on the respondent's application  
23 under subparagraph (A).

24 (C) NO AUTOMATIC STAY OF TEMPORARY  
25 ORDER.—The commencement of proceedings

1           under subparagraph (B) shall not, unless spe-  
2           cifically ordered by the court, operate as a stay  
3           of the Secretary's order.

4           (5) AUTHORITY OF THE SECRETARY TO PRO-  
5           HIBIT PERSONS FROM SERVING AS LOAN ORIGINA-  
6           TORS.—In any cease-and-desist proceeding under  
7           paragraph (1), the Secretary may issue an order to  
8           prohibit, conditionally or unconditionally, and per-  
9           manently or for such period of time as the Secretary  
10          shall determine, any person who has violated this  
11          subtitle or regulations thereunder, from acting as a  
12          loan originator if the conduct of that person dem-  
13          onstrates unfitness to serve as a loan originator.

14          (d) AUTHORITY OF THE SECRETARY TO ASSESS  
15          MONEY PENALTIES.—

16               (1) IN GENERAL.—The Secretary may impose a  
17               civil penalty on a loan originator operating in any  
18               State which is subject to licensing system established  
19               by the Secretary under section 107 if the Secretary  
20               finds, on the record after notice and opportunity for  
21               hearing, that such loan originator has violated or  
22               failed to comply with any requirement of this sub-  
23               title or any regulation prescribed by the Secretary  
24               under this subtitle or order issued under subsection  
25               (c).

1           (2) MAXIMUM AMOUNT OF PENALTY.—The  
2           maximum amount of penalty for each act or omis-  
3           sion described in paragraph (1) shall be \$5,000 for  
4           each day the violation continues.

5           **Subtitle B—Residential Mortgage**  
6           **Loan Origination Standards**

7           **SEC. 121. DEFINITIONS.**

8           Section 103 of the Truth in Lending Act (15 U.S.C.  
9           1602) is amended by adding at the end the following new  
10          subsection:

11          “(cc) DEFINITIONS RELATING TO MORTGAGE ORIGI-  
12          NATION AND RESIDENTIAL MORTGAGE LOANS.—

13                 “(1) COMMISSION.—Unless otherwise specified,  
14                 the term ‘Commission’ means the Federal Trade  
15                 Commission.

16                 “(2) FEDERAL BANKING AGENCIES.—The term  
17                 ‘Federal banking agencies’ means the Board of Gov-  
18                 ernors of the Federal Reserve System, the Comp-  
19                 troller of the Currency, the Director of the Office of  
20                 Thrift Supervision, the Federal Deposit Insurance  
21                 Corporation, and the National Credit Union Admin-  
22                 istration Board.

23                 “(3) MORTGAGE ORIGINATOR.—The term  
24                 ‘mortgage originator’—

25                         “(A) means any person who—

1                   “(i) takes a residential mortgage loan  
2                   application;

3                   “(ii) assists a consumer in obtaining  
4                   or applying to obtain a residential mort-  
5                   gage loan; or

6                   “(iii) offers or negotiates terms of a  
7                   residential mortgage loan, for direct or in-  
8                   direct compensation or gain, or in the ex-  
9                   pectation of direct or indirect compensa-  
10                  tion or gain;

11                  “(B) includes any person who represents  
12                  to the public, through advertising or other  
13                  means of communicating or providing informa-  
14                  tion (including the use of business cards, sta-  
15                  tionery, brochures, signs, rate lists, or other  
16                  promotional items), that such person can or will  
17                  provide any of the services or perform any of  
18                  the activities described in subparagraph (A);  
19                  and

20                  “(C) does not include any person who is  
21                  not otherwise described in subparagraph (A) or  
22                  (B) and who performs purely administrative or  
23                  clerical tasks on behalf of a person who is de-  
24                  scribed in any such subparagraph.

1           “(4) NATIONWIDE MORTGAGE LICENSING SYS-  
2           TEM AND REGISTRY.—The term ‘Nationwide Mort-  
3           gage Licensing System and Registry’ has the same  
4           meaning as in section 102(5) of the Mortgage Re-  
5           form and Anti-Predatory Lending Act of 2007.

6           “(5) OTHER DEFINITIONS RELATING TO MORT-  
7           GAGE ORIGINATOR.—For purposes of this sub-  
8           section, a person ‘assists a consumer in obtaining or  
9           applying to obtain a residential mortgage loan’ by,  
10          among other things, advising on residential mort-  
11          gage loan terms (including rates, fees, and other  
12          costs), preparing residential mortgage loan packages,  
13          or collecting information on behalf of the consumer  
14          with regard to a residential mortgage loan.

15          “(6) RESIDENTIAL MORTGAGE LOAN.—The  
16          term ‘residential mortgage loan’ means any con-  
17          sumer credit transaction that is secured by a mort-  
18          gage, deed of trust, or other equivalent consensual  
19          security interest on a dwelling or on residential real  
20          property that includes a dwelling, other than a con-  
21          sumer credit transaction under an open end credit  
22          plan or a reverse mortgage.

23          “(7) SECRETARY.—The term ‘Secretary’, when  
24          used in connection with any transaction or person

1 involved with a residential mortgage loan, means the  
2 Secretary of Housing and Urban Development.

3 “(8) SECURITIZATION VEHICLE.—The term  
4 ‘securitization vehicle’ means a trust, corporation,  
5 partnership, limited liability entity, or special pur-  
6 pose entity that—

7 “(A) is the issuer, or is created by the  
8 issuer, of mortgage pass-through certificates,  
9 participation certificates, mortgage-backed secu-  
10 rities, or other similar securities backed by a  
11 pool of assets that includes residential mortgage  
12 loans; and

13 “(B) holds such loans.

14 “(9) SECURITIZER.—The term ‘securitizer’  
15 means the person that transfers, conveys, or assigns,  
16 or causes the transfer, conveyance, or assignment of,  
17 residential mortgage loans, including through a spe-  
18 cial purpose vehicle, to any securitization vehicle, ex-  
19 cluding any trustee that holds such loans solely for  
20 the benefit of the securitization vehicle.”.

21 **SEC. 122. RESIDENTIAL MORTGAGE LOAN ORIGINATION.**

22 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
23 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting  
24 after section 129 the following new section:

1 **“§ 129A. Residential mortgage loan origination**

2 “(a) DUTY OF CARE.—

3 “(1) STANDARD.—Subject to regulations pre-  
4 scribed under this subsection, each mortgage origi-  
5 nator shall, in addition to the duties imposed by oth-  
6 erwise applicable provisions of State or Federal  
7 law—

8 “(A) be qualified, registered, and, when re-  
9 quired, licensed as a mortgage originator in ac-  
10 cordance with applicable State or Federal law  
11 including subtitle A of title I of the Mortgage  
12 Reform and Anti-Predatory Lending Act of  
13 2007;

14 “(B) with respect to each consumer seek-  
15 ing or inquiring about a residential mortgage  
16 loan, diligently work to present the consumer  
17 with a range of residential mortgage loan prod-  
18 ucts for which the consumer likely qualifies and  
19 which are appropriate to the consumer’s exist-  
20 ing circumstances, based on information known  
21 by, or obtained in good faith by, the originator;

22 “(C) make full, complete, and timely dis-  
23 closure to each such consumer of—

24 “(i) the comparative costs and bene-  
25 fits of each residential mortgage loan prod-

1           uct offered, discussed, or referred to by the  
2           originator;

3           “(ii) the nature of the originator’s re-  
4           lationship to the consumer (including the  
5           cost of the services to be provided by the  
6           originator and a statement that the mort-  
7           gage originator is or is not acting as an  
8           agent for the consumer, as the case may  
9           be); and

10           “(iii) any relevant conflicts of interest;

11           “(D) certify to the creditor, with respect to  
12           any transaction involving a residential mortgage  
13           loan, that the mortgage originator has fulfilled  
14           all requirements applicable to the originator  
15           under this section with respect to the trans-  
16           action; and

17           “(E) include the unique identifier of the  
18           originator provided by the Nationwide Mortgage  
19           Licensing System and Registry on all loan doc-  
20           uments.

21           “(2) CLARIFICATION OF EXTENT OF DUTY TO  
22           PRESENT RANGE OF PRODUCTS AND APPROPRIATE  
23           PRODUCTS.—

24           “(A) NO DUTY TO OFFER PRODUCTS FOR  
25           WHICH ORIGINATOR IS NOT AUTHORIZED TO

1 TAKE AN APPLICATION.—Paragraph (1)(B)  
2 shall not be construed as requiring—

3 “(i) a mortgage originator to present  
4 to any consumer any specific residential  
5 mortgage loan product that is offered by a  
6 creditor which does not accept consumer  
7 referrals from, or consumer applications  
8 submitted by or through, such originator;  
9 or

10 “(ii) a creditor to offer products that  
11 the creditor does not offer to the general  
12 public.

13 “(B) APPROPRIATE LOAN PRODUCT.—For  
14 purposes of paragraph (1)(B), a residential  
15 mortgage loan shall be presumed to be appro-  
16 priate for a consumer if—

17 “(i) the mortgage originator deter-  
18 mines in good faith, based on then existing  
19 information and without undergoing a full  
20 underwriting process, that the consumer  
21 has a reasonable ability to repay and re-  
22 ceives a net tangible benefit (as determined  
23 in accordance with regulations prescribed  
24 under section 129B(a)); and

1                   “(ii) the loan does not have predatory  
2                   characteristics or effects (such as equity  
3                   stripping and excessive fees and abusive  
4                   terms) as determined in accordance with  
5                   regulations prescribed under paragraph  
6                   (4).

7                   “(3) RULES OF CONSTRUCTION.—No provision  
8                   of this subsection shall be construed as—

9                   “(A) creating an agency or fiduciary rela-  
10                  tionship between a mortgage originator and a  
11                  consumer if the originator does not hold himself  
12                  or herself out as such an agent or fiduciary; or

13                  “(B) restricting a mortgage originator  
14                  from holding himself or herself out as an agent  
15                  or fiduciary of a consumer subject to any addi-  
16                  tional duty, requirement, or limitation applica-  
17                  ble to agents or fiduciaries under any Federal  
18                  or State law.

19                  “(4) REGULATIONS.—

20                  “(A) IN GENERAL.—The Federal banking  
21                  agencies, in consultation with the Secretary and  
22                  the Commission, shall jointly prescribe regula-  
23                  tions to—

24                  “(i) further define the duty estab-  
25                  lished under paragraph (1);

1                   “(ii) implement the requirements of  
2                   this subsection;

3                   “(iii) establish the time period within  
4                   which any disclosure required under para-  
5                   graph (1) shall be made to the consumer;  
6                   and

7                   “(iv) establish such other require-  
8                   ments for any mortgage originator as such  
9                   regulatory agencies may determine to be  
10                  appropriate to meet the purposes of this  
11                  subsection.

12                  “(B) COMPLEMENTARY AND NONDUPLICA-  
13                  TIVE DISCLOSURES.—The agencies referred to  
14                  in subparagraph (A) shall endeavor to make the  
15                  required disclosures to consumers under this  
16                  subsection complementary and nonduplicative  
17                  with other disclosures for mortgage consumers  
18                  to the extent such efforts—

19                         “(i) are practicable; and

20                         “(ii) do not reduce the value of any  
21                         such disclosure to recipients of such disclo-  
22                         sures.

23                  “(5) COMPLIANCE PROCEDURES REQUIRED.—  
24                  The Federal banking agencies shall prescribe regula-  
25                  tions requiring depository institutions to establish

1 and maintain procedures reasonably designed to as-  
2 sure and monitor the compliance of such depository  
3 institutions, the subsidiaries of such institutions,  
4 and the employees of such institutions or subsidi-  
5 aries with the requirements of this section and the  
6 registration procedures established under section  
7 106 of the Mortgage Reform and Anti-Predatory  
8 Lending Act of 2007.”.

9 (b) CLERICAL AMENDMENT.—The table of sections  
10 for chapter 2 of the Truth in Lending Act is amended  
11 by inserting after the item relating to section 129 the fol-  
12 lowing new item:

“129A. Residential mortgage loan origination.”.

13 **SEC. 123. ANTI-STEERING.**

14 Section 129A of the Truth in Lending Act (as added  
15 by section 122(a)) is amended by inserting after sub-  
16 section (a) the following new subsection:

17 “(b) PROHIBITION ON STEERING INCENTIVES.—

18 “(1) IN GENERAL.—No mortgage originator  
19 may receive from any person, and no person may  
20 pay to any mortgage originator, directly or indi-  
21 rectly, any incentive compensation (including yield  
22 spread premium) that is based on, or varies with,  
23 the terms (other than the amount of principal) of  
24 any loan that is not a qualified mortgage (as defined  
25 in section 129B(c)(3)).

1           “(2) ANTI-STEERING REGULATIONS.—The Fed-  
2           eral banking agencies, in consultation with the Sec-  
3           retary and the Commission, shall jointly prescribe  
4           regulations to prohibit—

5                   “(A) mortgage originators from steering  
6                   any consumer to a residential mortgage loan  
7                   that—

8                           “(i) the consumer lacks a reasonable  
9                           ability to repay;

10                           “(ii) does not provide the consumer  
11                           with a net tangible benefit; or

12                           “(iii) has predatory characteristics or  
13                           effects (such as equity stripping, excessive  
14                           fees, or abusive terms);

15                   “(B) mortgage originators from steering  
16                   any consumer from a residential mortgage loan  
17                   for which the consumer is qualified that is a  
18                   qualified mortgage (as defined in section  
19                   129B(c)(3)) to a residential mortgage loan that  
20                   is not a qualified mortgage; and

21                   “(C) abusive or unfair lending practices  
22                   that promote disparities among consumers of  
23                   equal credit worthiness but of different race,  
24                   ethnicity, gender, or age.

1           “(3) RULES OF CONSTRUCTION.—No provision  
2 of this subsection shall be construed as—

3           “(A) limiting or affecting the ability of a  
4 mortgage originator to sell residential mortgage  
5 loans to subsequent purchasers;

6           “(B) restricting a consumer’s ability to fi-  
7 nance origination fees to the extent that such  
8 fees were fully disclosed to the consumer earlier  
9 in the application process and do not vary  
10 based on the terms of the loan or the con-  
11 sumer’s decision about whether to finance such  
12 fees; or

13           “(C) prohibiting incentive payments to a  
14 mortgage originator based on the number of  
15 residential mortgage loans originated within a  
16 specified period of time.”.

17 **SEC. 124. LIABILITY.**

18           Section 129A of the Truth in Lending Act is amend-  
19 ed by inserting after subsection (c) (as added by section  
20 123) the following new subsection:

21           “(d) LIABILITY FOR VIOLATIONS.—

22           “(1) IN GENERAL.—For purposes of providing  
23 a cause of action for any failure by a mortgage origi-  
24 nator to comply with any requirement imposed  
25 under this section and any regulation prescribed

1 under this section, subsections (a) and (b) of section  
2 130 shall be applied with respect to any such failure  
3 by substituting ‘mortgage originator’ for ‘creditor’  
4 each place such term appears in each such sub-  
5 section

6 “(2) MAXIMUM.—The maximum amount of any  
7 liability of a mortgage originator under paragraph  
8 (1) to a consumer for any violation of this section  
9 shall not exceed an amount equal to 3 times the  
10 total amount of direct and indirect compensation or  
11 gain accruing to the mortgage originator in connec-  
12 tion with the residential mortgage loan involved in  
13 the violation, plus the costs to the consumer of the  
14 action, including a reasonable attorney’s fee.”.

15 **SEC. 125. REGULATIONS.**

16 The regulations required or authorized to be pre-  
17 scribed under this title or the amendments made by this  
18 title—

19 (1) shall be prescribed in final form before the  
20 end of the 12-month period beginning on the date of  
21 the enactment of this Act; and

22 (2) shall take effect not later than 18 months  
23 after the date of the enactment of this Act.

1 **TITLE II—MINIMUM STANDARDS**  
2 **FOR MORTGAGES**

3 **SEC. 201. ABILITY TO REPAY.**

4 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
5 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting  
6 after section 129A (as added by section 122(a)) the fol-  
7 lowing new section:

8 **“§ 129B. Minimum standards for residential mortgage**  
9 **loans**

10 “(a) ABILITY TO REPAY.—

11 “(1) IN GENERAL.—In accordance with regula-  
12 tions prescribed jointly by the Federal banking agen-  
13 cies, in consultation with the Commission, no cred-  
14 itor may make a residential mortgage loan unless  
15 the creditor makes a reasonable and good faith de-  
16 termination based on verified and documented infor-  
17 mation that, at the time the loan is consummated,  
18 the consumer has a reasonable ability to repay the  
19 loan, according to its terms, and all applicable taxes,  
20 insurance, and assessments.

21 “(2) MULTIPLE LOANS.—If the creditor knows,  
22 or has reason to know, that 1 or more residential  
23 mortgage loans secured by the same dwelling will be  
24 made to the same consumer, the creditor shall make  
25 a reasonable and good faith determination, based on

1       verified and documented information, that the con-  
2       sumer has a reasonable ability to repay the com-  
3       bined payments of all loans on the same dwelling ac-  
4       cording to the terms of those loans and all applicable  
5       taxes, insurance, and assessments.

6           “(3) BASIS FOR DETERMINATION.—A deter-  
7       mination under this subsection of a consumer’s abil-  
8       ity to repay a residential mortgage loan shall be  
9       based on consideration of the consumer’s credit his-  
10      tory, current income, expected income the consumer  
11      is reasonably assured of receiving, current obliga-  
12      tions, debt-to-income ratio, employment status, and  
13      other financial resources other than the consumer’s  
14      equity in the dwelling or real property that secures  
15      repayment of the loan.

16           “(4) NONSTANDARD LOANS.—

17           “(A) VARIABLE RATE LOANS THAT DEFER  
18      REPAYMENT OF ANY PRINCIPAL OR INTER-  
19      EST.—For purposes of determining, under this  
20      subsection, a consumer’s ability to repay a vari-  
21      able rate residential mortgage loan that allows  
22      or requires the consumer to defer the repay-  
23      ment of any principal or interest, the creditor  
24      shall take into consideration a fully amortizing  
25      repayment schedule.

1           “(B) INTEREST-ONLY LOANS.—For pur-  
2           poses of determining, under this subsection, a  
3           consumer’s ability to repay a residential mort-  
4           gage loan that permits or requires the payment  
5           of interest only, the creditor shall take into con-  
6           sideration the payment amount required to am-  
7           ortize the loan by its final maturity.

8           “(C) CALCULATION FOR NEGATIVE AMOR-  
9           TIZATION.—In making any determination under  
10          this subsection, a creditor shall also take into  
11          consideration any balance increase that may ac-  
12          crue from any negative amortization provision.

13          “(D) CALCULATION PROCESS.—For pur-  
14          poses of making any determination under this  
15          subsection, a creditor shall calculate the month-  
16          ly payment amount for principal and interest on  
17          any residential mortgage loan by assuming—

18                 “(i) the loan proceeds are fully dis-  
19                 bursed on the date of the consummation of  
20                 the loan;

21                 “(ii) the loan is to be repaid in sub-  
22                 stantially equal monthly amortizing pay-  
23                 ments for principal and interest over the  
24                 entire term of the loan with no balloon  
25                 payment, unless the loan contract requires

1 more rapid repayment (including balloon  
2 payment), in which case the contract's re-  
3 payment schedule shall be used in this cal-  
4 culation; and

5 “(iii) the interest rate over the entire  
6 term of the loan is a fixed rate equal to the  
7 fully indexed rate at the time of the loan  
8 closing, without considering the introduc-  
9 tory rate.

10 “(5) FULLY-INDEXED RATE DEFINED.—For  
11 purposes of this subsection, the term ‘fully indexed  
12 rate’ means the index rate prevailing on a residential  
13 mortgage loan at the time the loan is made plus the  
14 margin that will apply after the expiration of any in-  
15 troduutory interest rates.”.

16 (b) CLERICAL AMENDMENT.—The table of sections  
17 for chapter 2 of the Truth in Lending Act is amended  
18 by inserting after the item relating to section 129A (as  
19 added by section 122(b)) the following new item:

“129B. Minimum standards for all mortgages.”.

20 **SEC. 202. NET TANGIBLE BENEFIT FOR REFINANCING OF**  
21 **RESIDENTIAL MORTGAGE LOANS.**

22 Section 129B of the Truth in Lending Act (as added  
23 by section 201(a)) is amended by inserting after sub-  
24 section (a) the following new subsection:

1           “(b) NET TANGIBLE BENEFIT FOR REFINANCING OF  
2 RESIDENTIAL MORTGAGE LOANS.—

3           “(1) IN GENERAL.—In accordance with regula-  
4 tions prescribed under paragraph (3), no creditor  
5 may extend credit in connection with any residential  
6 mortgage loan that involves a refinancing of a prior  
7 existing residential mortgage loan unless the creditor  
8 reasonably and in good faith determines, at the time  
9 the loan is consummated and on the basis of infor-  
10 mation known by or obtained in good faith by the  
11 creditor, that the refinanced loan will provide a net  
12 tangible benefit to the consumer.

13           “(2) CERTAIN LOANS PROVIDING NO NET TAN-  
14 GIBLE BENEFIT.—A residential mortgage loan that  
15 involves a refinancing of a prior existing residential  
16 mortgage loan shall not be considered to provide a  
17 net tangible benefit to the consumer if the costs of  
18 the refinanced loan, including points, fees and other  
19 charges, exceed the amount of any newly advanced  
20 principal without any corresponding changes in the  
21 terms of the refinanced loan that are advantageous  
22 to the consumer.

23           “(3) NET TANGIBLE BENEFIT.—The Federal  
24 banking agencies shall jointly prescribe regulations

1 defining the term ‘net tangible benefit’ for purposes  
2 of this subsection.”.

3 **SEC. 203. SAFE HARBOR AND REBUTTABLE PRESUMPTION.**

4 Section 129B of the Truth in Lending Act is amend-  
5 ed by inserting after subsection (b) (as added by section  
6 202) the following new subsection:

7 “(c) PRESUMPTION OF ABILITY TO REPAY AND NET  
8 TANGIBLE BENEFIT.—

9 “(1) IN GENERAL.—Any creditor with respect  
10 to any residential mortgage loan, and any assignee  
11 or securitizer of such loan, may presume that the  
12 loan has met the requirements of subsections (a)  
13 and (b), if the loan is a qualified mortgage or a  
14 qualified safe harbor mortgage.

15 “(2) REBUTTABLE PRESUMPTION.—Any pre-  
16 sumption established under paragraph (1) with re-  
17 spect to any residential mortgage loan shall be re-  
18 buttable only—

19 “(A) against the creditor of such loan; and

20 “(B) if such loan is a qualified safe harbor  
21 mortgage.

22 “(3) DEFINITIONS.—For purposes of this sec-  
23 tion the following definitions shall apply:

24 “(A) MOST RECENT CONVENTIONAL MORT-  
25 GAGE RATE.—The term ‘most recent conven-

1            tional mortgage rate’ means the contract inter-  
2            est rate on commitments for fixed-rate first  
3            mortgages most recently published in the Fed-  
4            eral Reserve Statistical Release on selected in-  
5            terest rates (daily or weekly), and commonly re-  
6            ferred to as the H.15 release (or any successor  
7            publication), in the week preceding a date of de-  
8            termination for purposes of applying this sub-  
9            section.

10            “(B) QUALIFIED MORTGAGE.—The term  
11            ‘qualified mortgage’ means—

12            “(i) any residential mortgage loan  
13            that constitutes a first lien on the dwelling  
14            or real property securing the loan and ei-  
15            ther—

16            “(I) has an annual percentage  
17            rate that does not equal or exceed the  
18            yield on securities issued by the Sec-  
19            retary of the Treasury under chapter  
20            31 of title 31, United States Code,  
21            that bear comparable periods of matu-  
22            rity by more than 3 percentage points;  
23            or

24            “(II) has an annual percentage  
25            rate that does not equal or exceed the

1 most recent conventional mortgage  
2 rate, or such other annual percentage  
3 rate as may be established by regula-  
4 tion under paragraph (6), by more  
5 than 175 basis points; and

6 “(ii) any residential mortgage loan  
7 that is not the first lien on the dwelling or  
8 real property securing the loan and ei-  
9 ther—

10 “(I) has an annual percentage  
11 rate that does not equal or exceed the  
12 yield on securities issued by the Sec-  
13 retary of the Treasury under chapter  
14 31 of title 31, United States Code,  
15 that bear comparable periods of matu-  
16 rity by more than 5 percentage points;  
17 or

18 “(II) has an annual percentage  
19 rate that does not equal or exceed the  
20 most recent conventional mortgage  
21 rate, or such other annual percentage  
22 rate as may be established by regula-  
23 tion under paragraph (6), by more  
24 than 375 basis points.

1                   “(C) QUALIFIED SAFE HARBOR MORT-  
2                   GAGE.—The term ‘qualified safe harbor mort-  
3                   gage’ means any residential mortgage loan—

4                   “(i) for which the income and finan-  
5                   cial resources of the consumer are verified  
6                   and documented;

7                   “(ii) for which the residential mort-  
8                   gage loan underwriting process is based on  
9                   the fully-indexed rate, and takes into ac-  
10                  count all applicable taxes, insurance, and  
11                  assessments;

12                  “(iii) which does not provide for a re-  
13                  payment schedule that results in negative  
14                  amortization at any time;

15                  “(iv) meets such other requirements  
16                  as may be established by regulation; and

17                  “(v) for which any of the following  
18                  factors apply with respect to such loan:

19                         “(I) The periodic payment  
20                         amount for principal and interest are  
21                         fixed for a minimum of 5 years under  
22                         the terms of the loan.

23                         “(II) In the case of a variable  
24                         rate loan, the annual percentage rate  
25                         varies based on a margin that is less

1 than 3 percent over a single generally  
2 accepted interest rate index that is  
3 the basis for determining the rate of  
4 interest for the mortgage.

5 “(III) The loan does not cause  
6 the consumer’s total monthly debts,  
7 including amounts under the loan, to  
8 exceed a percentage established by  
9 regulation of his or her monthly gross  
10 income or such other maximum per-  
11 centage of such income as may be pre-  
12 scribed by regulation under paragraph  
13 (6).

14 “(4) DETERMINATION OF COMPARISON TO  
15 TREASURY SECURITIES.—

16 “(A) IN GENERAL.—Without regard to  
17 whether a residential mortgage loan is subject  
18 to or reportable under the Home Mortgage Dis-  
19 closure Act of 1975 and subject to subpara-  
20 graph (B), the difference between the annual  
21 percentage rate of such loan and the yield on  
22 securities issued by the Secretary of the Treas-  
23 ury under chapter 31 of title 31, United States  
24 Code, having comparable periods of maturity  
25 shall be determined using the same procedures

1           and methods of calculation applicable to loans  
2           that are subject to the reporting requirements  
3           under the Home Mortgage Disclosure Act of  
4           1975.

5           “(B) DATE OF DETERMINATION OF  
6           YIELD.—The yield on the securities referred to  
7           in subparagraph (A) shall be determined, for  
8           purposes of such subparagraph and paragraph  
9           (3) with respect to any residential mortgage  
10          loan, as of the 15th day of the month preceding  
11          the month in which a completed application is  
12          submitted for such loan.

13          “(5) APR IN CASE OF INTRODUCTORY  
14          OFFER.—For purposes of making a determination of  
15          whether a residential mortgage loan that provides  
16          for a fixed interest rate for an introductory period  
17          and then resets or adjusts to a variable rate is a  
18          qualified mortgage, the determination of the annual  
19          percentage rate, as determined in accordance with  
20          regulations prescribed by the Board under section  
21          107, shall be based on the greater of the introduc-  
22          tory rate and the fully indexed rate of interest.

23          “(6) REGULATIONS.—

1           “(A) IN GENERAL.—The Federal banking  
2 agencies shall jointly prescribe regulations to  
3 carry out the purposes of this subsection.

4           “(B) REVISION OF SAFE HARBOR CRI-  
5 TERIA.—The Federal banking agencies may  
6 jointly prescribe regulations that revise, add to,  
7 or subtract from the criteria that define a quali-  
8 fied mortgage and a qualified safe harbor mort-  
9 gage to the extent necessary and appropriate to  
10 effectuate the purposes of this subsection, to  
11 prevent circumvention or evasion of this sub-  
12 section, or to facilitate compliance with this  
13 subsection.

14           “(7) RULE OF CONSTRUCTION.—No provision  
15 of this subsection may be construed as implying that  
16 a residential mortgage loan may be presumed to vio-  
17 late subsection (a) or (b) if such loan is not a quali-  
18 fied mortgage or a qualified safe harbor mortgage.”.

19 **SEC. 204. LIABILITY.**

20           Section 129B of the Truth in Lending Act is amend-  
21 ed by inserting after subsection (c) (as added by section  
22 203) the following new subsection:

23           “(d) LIABILITY FOR VIOLATIONS.—

24           “(1) IN GENERAL.—

1           “(A) RESCISSION.—In addition to any  
2           other liability under this title for a violation by  
3           a creditor of subsection (a) or (b) (for example  
4           under section 130) and subject to the statute of  
5           limitations in paragraph (7), a civil action may  
6           be maintained against a creditor for a violation  
7           of subsection (a) or (b) with respect to a resi-  
8           dential mortgage loan for the rescission of the  
9           loan, and such additional costs as the obligor  
10          may have incurred as a result of the violation  
11          and in connection with obtaining a rescission of  
12          the loan, including a reasonable attorney’s fee.

13           “(B) CURE.—A creditor shall not be liable  
14          for rescission under subparagraph (A) with re-  
15          spect to a residential mortgage loan if, no later  
16          than 90 days after the receipt of notification  
17          from the consumer that the loan violates sub-  
18          section (a) or (b), the creditor provides a cure.

19           “(2) LIMITED ASSIGNEE AND SECURITIZER LI-  
20          ABILITY.—Notwithstanding sections 125(e) and 131  
21          and except as provided in paragraph (3), a civil ac-  
22          tion which may be maintained against a creditor  
23          with respect to a residential mortgage loan for a vio-  
24          lation of subsection (a) or (b) may be maintained  
25          against any assignee or securitizer of such residen-

1 tial mortgage loan, who has acted in good faith, for  
2 the following liabilities only:

3 “(A) Rescission of the loan.

4 “(B) Such additional costs as the obligor  
5 may have incurred as a result of the violation  
6 and in connection with obtaining a rescission of  
7 the loan, including a reasonable attorney’s fee.

8 “(3) ASSIGNEE AND SECURITIZER EXEMP-  
9 TION.—No assignee or securitizer of a residential  
10 mortgage loan shall be liable under paragraph (2)  
11 with respect to such loan if—

12 “(A) no later than 90 days after the re-  
13 ceipt of notification from the consumer that the  
14 loan violates subsection (a) or (b), the assignee  
15 or securitizer provides a cure so that the loan  
16 satisfies the requirements of subsections (a)  
17 and (b); or

18 “(B) each of the following conditions are  
19 met:

20 “(i) The assignee or securitizer—

21 “(I) has a policy against buying  
22 residential mortgage loans other than  
23 qualified mortgages or qualified safe  
24 harbor mortgages (as defined in sub-  
25 section (c));

1                   “(II) the policy is intended to  
2                   verify seller or assignor compliance  
3                   with the representations and warran-  
4                   ties required under clause (ii); and

5                   “(III) in accordance with regula-  
6                   tions which the Federal banking agen-  
7                   cies and the Securities and Exchange  
8                   Commission shall jointly prescribe, ex-  
9                   ercises reasonable due diligence to ad-  
10                  here to such policy in purchasing resi-  
11                  dential mortgage loans, including  
12                  through adequate, thorough, and con-  
13                  sistently applied sampling procedures.

14                  “(ii) The contract under which such  
15                  assignee or securitizer acquired the resi-  
16                  dential mortgage loan from a seller or as-  
17                  signor of the loan contains representations  
18                  and warranties that the seller or as-  
19                  signor—

20                  “(I) is not selling or assigning  
21                  any residential mortgage loan which is  
22                  not a qualified mortgage or a qualified  
23                  safe harbor mortgage; or

1                   “(II) is a beneficiary of a rep-  
2                   resentation and warranty from a pre-  
3                   vious seller or assignor to that effect,  
4                   and the assignee or securitizer in good  
5                   faith takes reasonable steps to obtain the  
6                   benefit of such representation or warranty.

7                   “(4) CURE DEFINED.—For purposes of this  
8                   subsection, the term ‘cure’ means, with respect to a  
9                   residential mortgage loan that violates subsection (a)  
10                  or (b), the modification or refinancing, at no cost to  
11                  the consumer, of the loan to provide terms that  
12                  would have satisfied the requirements of subsection  
13                  (a) and (b) if the loan had contained such terms as  
14                  of the origination of the loan.

15                  “(5) DISAGREEMENT OVER CURE.—If any cred-  
16                  itor, assignee, or securitizer and a consumer fail to  
17                  reach agreement on a cure with respect to a residen-  
18                  tial mortgage loan that violates subsection (a) or (b),  
19                  or the consumer fails to accept a cure proffered by  
20                  a creditor, assignee, or securitizer—

21                         “(A) the creditor, assignee, or securitizer  
22                         may provide the cure; and

23                         “(B) the consumer may challenge the ade-  
24                         quacy of the cure during the 6-month period be-  
25                         ginning when the cure is provided.

1 If the consumer's challenge, under this paragraph,  
2 of a cure is successful, the creditor, assignee, or  
3 securitizer shall be liable to the consumer for rescis-  
4 sion of the loan and such additional costs under  
5 paragraph (2).

6 “(6) INABILITY TO PROVIDE RESCISSION.—If a  
7 creditor, assignee, or securitizer cannot provide re-  
8 scission under paragraph (1) or (2), the liability of  
9 such creditor, assignee, or securitizer shall be met by  
10 providing the financial equivalent of a rescission, to-  
11 gether with such additional costs as the obligor may  
12 have incurred as a result of the violation and in con-  
13 nection with obtaining a rescission of the loan, in-  
14 cluding a reasonable attorney's fee.

15 “(7) NO CLASS ACTIONS AGAINST ASSIGNEE OR  
16 SECURITIZER UNDER PARAGRAPH (2).—Only indi-  
17 vidual actions may be brought against an assignee  
18 or securitizer of a residential mortgage loan for a  
19 violation of subsection (a) or (b).

20 “(8) STATUTE OF LIMITATIONS.—The liability  
21 of a creditor, assignee, or securitizer under this sub-  
22 section shall apply in any original action against a  
23 creditor under paragraph (1) or an assignee or  
24 securitizer under paragraph (2) which is brought be-  
25 fore—

1           “(A) in the case of any residential mort-  
2           gage loan other than a loan to which subpara-  
3           graph (B) applies, the end of the 3-year period  
4           beginning on the date the loan is consummated;  
5           or

6           “(B) in the case of a residential mortgage  
7           loan that provides for a fixed interest rate for  
8           an introductory period and then resets or ad-  
9           justs to a variable rate or that provides for a  
10          nonamortizing payment schedule and then con-  
11          verts to an amortizing payment schedule, the  
12          earlier of—

13                 “(i) the end of the 1-year period be-  
14                 ginning on the date of such reset, adjust-  
15                 ment, or conversion; or

16                 “(ii) the end of the 6-year period be-  
17                 ginning on the date the loan is con-  
18                 summated.

19           “(9) POOLS AND INVESTORS IN POOLS EX-  
20          CLUDED.—In the case of residential mortgage loans  
21          acquired or aggregated for the purpose of including  
22          such loans in a pool of assets held for the purpose  
23          of issuing or selling instruments representing inter-  
24          ests in such pools including through a securitization  
25          vehicle, the terms ‘assignee’ and ‘securitizer’, as

1 used in this section, do not include the securitization  
2 vehicle, the pools of such loans or any original or  
3 subsequent purchaser of any interest in the  
4 securitization vehicle or any instrument representing  
5 a direct or indirect interest in such pool.”.

6 **SEC. 205. DEFENSE TO FORECLOSURE.**

7 Section 129B of the Truth in Lending Act is amend-  
8 ed by inserting after subsection (d) (as added by section  
9 204) the following new subsection:

10 “(e) DEFENSE TO FORECLOSURE.—Notwithstanding  
11 any other provision of law—

12 “(1) when the holder of a residential mortgage  
13 loan or anyone acting for such holder initiates a ju-  
14 dicial or nonjudicial foreclosure—

15 “(A) a consumer who has the right to re-  
16 scind under this section with respect to such  
17 loan against the creditor or any assignee or  
18 securitizer may assert such right as a defense  
19 to foreclosure or counterclaim to such fore-  
20 closure against the holder, or

21 “(B) if the foreclosure proceeding begins  
22 after the end of the period during which a con-  
23 sumer may bring an action for rescission under  
24 subsection (d), the consumer may seek actual  
25 damages incurred by reason of the violation

1           which gave rise to the right of rescission, to-  
2           gether with costs of the action, including a rea-  
3           sonable attorney's fee against the creditor or  
4           any assignee or securitizer; and

5           “(2) such holder or anyone acting for such  
6           holder or any other applicable third party may sell,  
7           transfer, convey, or assign a residential mortgage  
8           loan to a creditor, any assignee, or any securitizer,  
9           or their designees, to effect a rescission or cure.”.

10 **SEC. 206. ADDITIONAL STANDARDS AND REQUIREMENTS.**

11           (a) IN GENERAL.—Section 129B of the Truth in  
12 Lending Act is amended by inserting after subsection (e)  
13 (as added by section 205) the following new subsections:

14           “(f) PROHIBITION ON CERTAIN PREPAYMENT PEN-  
15 ALTIES.—

16           “(1) PROHIBITED ON CERTAIN LOANS.—A resi-  
17 dential mortgage loan that is not a qualified mort-  
18 gage (as defined in subsection (c)) may not contain  
19 terms under which a consumer must pay a prepay-  
20 ment penalty for paying all or part of the principal  
21 after the loan is consummated.

22           “(2) PROHIBITED AFTER INITIAL PERIOD ON  
23 LOANS WITH A RESET.—A qualified mortgage with  
24 a fixed interest rate for an introductory period that  
25 adjusts or resets after such period may not contain

1 terms under which a consumer must pay a prepay-  
2 ment penalty for paying all or part of the principal  
3 after the beginning of the 3-month period ending on  
4 the date of the adjustment or reset.

5 “(g) SINGLE PREMIUM CREDIT INSURANCE PROHIB-  
6 ITED.—No creditor may finance, directly or indirectly, in  
7 connection with any residential mortgage loan or with any  
8 extension of credit under an open end consumer credit  
9 plan secured by the principal dwelling of the consumer  
10 (other than a reverse mortgage), any credit life, credit dis-  
11 ability, credit unemployment or credit property insurance,  
12 or any other accident, loss-of-income, life or health insur-  
13 ance, or any payments directly or indirectly for any debt  
14 cancellation or suspension agreement or contract, except  
15 that insurance premiums or debt cancellation or suspen-  
16 sion fees calculated and paid in full on a monthly basis  
17 shall not be considered financed by the creditor.

18 “(h) ARBITRATION.—

19 “(1) IN GENERAL.—No residential mortgage  
20 loan and no extension of credit under an open end  
21 consumer credit plan secured by the principal dwell-  
22 ing of the consumer, other than a reverse mortgage,  
23 may include terms which require arbitration or any  
24 other nonjudicial procedure as the method for resolv-

1       ing any controversy or settling any claims arising  
2       out of the transaction.

3               “(2) POST-CONTROVERSY AGREEMENTS.—Sub-  
4       ject to paragraph (3), paragraph (1) shall not be  
5       construed as limiting the right of the consumer and  
6       the creditor, any assignee, or any securitizer to  
7       agree to arbitration or any other nonjudicial proce-  
8       dure as the method for resolving any controversy at  
9       any time after a dispute or claim under the trans-  
10      action arises.

11              “(3) NO WAIVER OF STATUTORY CAUSE OF AC-  
12      TION.—No provision of any residential mortgage  
13      loan or of any extension of credit under an open end  
14      consumer credit plan secured by the principal dwell-  
15      ing of the consumer (other than a reverse mort-  
16      gage), and no other agreement between the con-  
17      sumer and the creditor relating to the residential  
18      mortgage loan or extension of credit referred to in  
19      paragraph (1), shall be applied or interpreted so as  
20      to bar a consumer from bringing an action in an ap-  
21      propriate district court of the United States, or any  
22      other court of competent jurisdiction, pursuant to  
23      section 130 or any other provision of law, for dam-  
24      ages or other relief in connection with any alleged

1 violation of this section, any other provision of this  
2 title, or any other Federal law.

3 “(i) DUTY OF SECURITIZER TO RETAIN ACCESS TO  
4 LOANS.—Any securitizer shall reserve the right and pre-  
5 serve an ability, in any document or contract establishing  
6 any pool of assets that includes any residential mortgage  
7 loan—

8 “(1) to identify and obtain access to any such  
9 loan in the pool; and

10 “(2) to provide for and obtain a remedy under  
11 this title for the obligor under any such loan.

12 “(j) EFFECT OF FORECLOSURE ON PREEXISTING  
13 LEASE.—

14 “(1) IN GENERAL.—In the case of any fore-  
15 closure on any dwelling or residential real property  
16 securing an extension of credit made under a con-  
17 tract entered into after the date of the enactment of  
18 the Mortgage Reform and Anti-Predatory Lending  
19 Act of 2007, any successor in interest in such prop-  
20 erty pursuant to the foreclosure shall assume such  
21 interest subject to—

22 “(A) any bona fide lease made to a bona  
23 fide tenant entered into before the notice of  
24 foreclosure; and

1           “(B) the rights of any bona fide tenant  
2           without a lease or with a lease terminable at  
3           will under State law and the provision, by the  
4           successor in interest, of a notice to vacate to  
5           the tenant at least 90 days before the effective  
6           date of the notice.

7           “(2) BONA FIDE LEASE OR TENANCY.—For  
8           purposes of this section, a lease or tenancy shall be  
9           considered bona fide only if—

10           “(A) the lease or tenancy was the result of  
11           an arms-length transaction; or

12           “(B) the lease or tenancy requires the ten-  
13           ant to pay rent that is not substantially less  
14           than fair market rent for the property.

15           “(k) MORTGAGES WITH NEGATIVE AMORTIZA-  
16           TION.—No creditor may extend credit to a first-time bor-  
17           rower in connection with a consumer credit transaction  
18           under an open or closed end consumer credit plan secured  
19           by a dwelling or residential real property that includes a  
20           dwelling, other than a reverse mortgage, that provides or  
21           permits a payment plan that may, at any time over the  
22           term of the extension of credit, result in negative amorti-  
23           zation unless, before such transaction is consummated—

24           “(1) the creditor provides the consumer with a  
25           statement that—

1           “(A) the pending transaction will or may,  
2           as the case may be, result in negative amortiza-  
3           tion;

4           “(B) describes negative amortization in  
5           such manner as the Federal banking agencies  
6           shall prescribe;

7           “(C) negative amortization increases the  
8           outstanding principal balance of the account;  
9           and

10          “(D) negative amortization reduces the  
11          consumer’s equity in the dwelling or real prop-  
12          erty; and

13          “(2) the consumer provides the creditor with  
14          sufficient documentation to demonstrate that the  
15          consumer received homeownership counseling from  
16          organizations or counselors certified by the Sec-  
17          retary of Housing and Urban Development as com-  
18          petent to provide such counseling.

19          “(1) ANNUAL CONTACT INFORMATION.—At least  
20          once annually and whenever there is a change in owner-  
21          ship of a residential mortgage loan, the servicer with re-  
22          spect to a residential mortgage loan shall provide a written  
23          notice to the consumer identifying the name of the creditor  
24          or any assignee or securitizer who should be contacted by

1 the consumer for any reason concerning the consumer's  
2 rights with respect to the loan.”.

3 (b) CONFORMING AMENDMENT RELATING TO EN-  
4 FORCEMENT.—Section 108(a) of the Truth in Lending  
5 Act (15 U.S.C. 1607(a)) is amended by inserting after  
6 paragraph (6) the following new paragraph:

7 “(7) sections 21B and 21C of the Securities  
8 Exchange Act of 1934, in the case of a broker or  
9 dealer, other than a depository institution, by the  
10 Securities and Exchange Commission.”.

11 **SEC. 207. RULE OF CONSTRUCTION.**

12 Except as otherwise expressly provided in section  
13 129A or 129B of the Truth in Lending Act (as added by  
14 this Act), no provision of such section 129A or 129B shall  
15 be construed as superseding, repealing, or affecting any  
16 duty, right, obligation, privilege, or remedy of any person  
17 under any other provision of the Truth in Lending Act  
18 or any other provision of Federal or State law.

19 **SEC. 208. EFFECT ON STATE LAWS.**

20 (a) IN GENERAL.—Section 129B(d) of the Truth in  
21 Lending Act (as added by section 204) shall supersede any  
22 State law that provides additional remedies against any  
23 assignee, securitizer, or securitization vehicle, and the  
24 remedies described in such section shall constitute the sole  
25 remedies against any assignee, securitizer, or

1 securitization vehicle, for a violation of subsection (a) or  
2 (b) of section 129B of such Act (relating to ability to  
3 repay or net tangible benefit) or any other State law aris-  
4 ing out of or relating to the specific subject matter of sub-  
5 section (a) or (b) of such section 129B.

6 (b) **RULE OF CONSTRUCTION.**—No provision of this  
7 section shall be construed as limiting the application of  
8 any State law against a creditor. Nor shall any provision  
9 of this section be construed as limiting the application of  
10 any State law against any assignee, securitizer, or  
11 securitization vehicle that does not arise out of or relate  
12 to, or provide additional remedies in connection with, the  
13 specific subject matter of subsection (a) or (b) of section  
14 129B of the Truth in Lending Act.

15 **SEC. 209. REGULATIONS.**

16 Regulations required or authorized to be prescribed  
17 under this title or the amendments made by this title—

18 (1) shall be prescribed in final form before the  
19 end of the 12-month period beginning on the date of  
20 the enactment of this Act; and

21 (2) shall take effect not later than 18 months  
22 after the date of the enactment of this Act.

23 **SEC. 210. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.**

24 (a) **INCREASE IN AMOUNT OF CIVIL MONEY PEN-**  
25 **ALTIES FOR CERTAIN VIOLATIONS.**—Section 130(a)(2) of

1 the Truth in Lending Act (15 U.S.C. 1640(a)(2)) is  
2 amended—

3 (1) by striking “\$100” and inserting “\$200”;

4 (2) by striking “\$1,000” and inserting  
5 “\$2,000”

6 (3) by striking “\$200” and inserting “\$400”;

7 (4) by striking “\$2,000” and inserting  
8 “\$4,000”; and

9 (5) by striking “\$500,000” and inserting  
10 “\$1,000,000”.

11 (b) STATUTE OF LIMITATIONS EXTENDED FOR SEC-  
12 TION 129 VIOLATIONS.—Section 130(e) of the Truth in  
13 Lending Act (15 U.S.C. 1640(e)) (as amended by section  
14 207 of this title) is amended—

15 (1) in the first sentence, by striking “Any ac-  
16 tion” and inserting “Except as provided in the sub-  
17 sequent sentence, any action”; and

18 (2) by inserting after the first sentence the fol-  
19 lowing new sentence: “Any action under this section  
20 with respect to any violation of section 129 may be  
21 brought in any United States district court, or in  
22 any other court of competent jurisdiction, before the  
23 end of the 3-year period beginning on the date of the  
24 occurrence of the violation.”.

1                   **TITLE III—HIGH-COST**  
2                   **MORTGAGES**

3 **SEC. 301. DEFINITIONS RELATING TO HIGH-COST MORT-**  
4                   **GAGES.**

5           (a) HIGH-COST MORTGAGE DEFINED.—Section  
6 103(aa) of the Truth in Lending Act (15 U.S.C.  
7 1602(aa)) is amended by striking all that precedes para-  
8 graph (2) and inserting the following:

9           “(aa) HIGH-COST MORTGAGE.—

10                   “(1) DEFINITION.—

11                           “(A) IN GENERAL.—The term ‘high-cost  
12 mortgage’, and a mortgage referred to in this  
13 subsection, means a consumer credit trans-  
14 action that is secured by the consumer’s prin-  
15 cipal dwelling, other than a reverse mortgage  
16 transaction, if—

17                                   “(i) in the case of a credit transaction  
18 secured—

19   “(I) by a first mortgage on the  
20 consumer’s principal dwelling, the an-  
21 nual percentage rate at consummation  
22 of the transaction will exceed by more  
23 than 8 percentage points the yield on  
24 Treasury securities having comparable  
25 periods of maturity on the 15th day of

1 the month immediately preceding the  
2 month in which the application for the  
3 extension of credit is received by the  
4 creditor; or

5 “(II) by a subordinate or junior  
6 mortgage on the consumer’s principal  
7 dwelling, the annual percentage rate  
8 at consummation of the transaction  
9 will exceed by more than 10 percent-  
10 age points the yield on Treasury secu-  
11 rities having comparable periods of  
12 maturity on the 15th day of the  
13 month immediately preceding the  
14 month in which the application for the  
15 extension of credit is received by the  
16 creditor;

17 “(ii) the total points and fees payable  
18 in connection with the transaction ex-  
19 ceed—

20 “(I) in the case of a transaction  
21 for \$20,000 or more, 5 percent (8  
22 percent if the dwelling is personal  
23 property) of the total transaction  
24 amount; or

1                   “(II) in the case of a transaction  
2                   for less than \$20,000, the lesser of 8  
3                   percent of the total transaction  
4                   amount or \$1,000; or

5                   “(iii) the credit transaction documents  
6                   permit the creditor to charge or collect pre-  
7                   payment fees or penalties more than 36  
8                   months after the transaction closing or  
9                   such fees or penalties exceed, in the aggre-  
10                  gate, more than 2 percent of the amount  
11                  prepaid.

12                  “(B) INTRODUCTORY RATES TAKEN INTO  
13                  ACCOUNT.—For purposes of subparagraph  
14                  (A)(i), the annual percentage rate of interest  
15                  shall be determined based on the following in-  
16                  terest rate:

17                  “(i) In the case of a fixed-rate trans-  
18                  action in which the annual percentage rate  
19                  will not vary during the term of the loan,  
20                  the interest rate in effect on the date of  
21                  consummation of the transaction.

22                  “(ii) In the case of a transaction in  
23                  which the rate of interest varies solely in  
24                  accordance with an index, the interest rate  
25                  determined by adding the index rate in ef-

1           fect on the date of consummation of the  
2           transaction to the maximum margin per-  
3           mitted at any time during the transaction  
4           agreement.

5           “(iii) In the case of any other trans-  
6           action in which the rate may vary at any  
7           time during the term of the loan for any  
8           reason, the interest charged on the trans-  
9           action at the maximum rate that may be  
10          charged during the term of the trans-  
11          action.”.

12          (b) ADJUSTMENT OF PERCENTAGE POINTS.—Section  
13 103(aa)(2) of the Truth in Lending Act (15 U.S.C.  
14 1602(aa)(2)) is amended by striking subparagraph (B)  
15 and inserting the following new subparagraph:

16           “(B) An increase or decrease under sub-  
17          paragraph (A)—

18           “(i) may not result in the number of  
19          percentage points referred to in paragraph  
20          (1)(A)(i)(I) being less than 6 percentage  
21          points or greater than 10 percentage  
22          points; and

23           “(ii) may not result in the number of  
24          percentage points referred to in paragraph  
25          (1)(A)(i)(II) being less than 8 percentage

1                   points or greater than 12 percentage  
2                   points.”.

3           (c) POINTS AND FEES DEFINED.—

4           (1) IN GENERAL.—Section 103(aa)(4) of the  
5           Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is  
6           amended—

7                   (A) by striking subparagraph (B) and in-  
8                   serting the following:

9                   “(B) all compensation paid directly or indi-  
10                  rectly by a consumer or creditor to a mortgage  
11                  broker from any source, including a mortgage  
12                  originator that originates a loan in the name of  
13                  the originator in a table-funded transaction;”;

14                  (B) in subparagraph (C)(ii), by striking  
15                  “and” after the semicolon at the end;

16                  (C) by redesignating subparagraph (D) as  
17                  subparagraph (G); and

18                  (D) by inserting after subparagraph (C)  
19                  the following new subparagraphs:

20                  “(D) premiums or other charges payable at  
21                  or before closing for any credit life, credit dis-  
22                  ability, credit unemployment, or credit property  
23                  insurance, or any other accident, loss-of-income,  
24                  life or health insurance, or any payments di-  
25                  rectly or indirectly for any debt cancellation or

1 suspension agreement or contract, except that  
2 insurance premiums or debt cancellation or sus-  
3 pension fees calculated and paid in full on a  
4 monthly basis shall not be considered financed  
5 by the creditor;

6 “(E) except as provided in subsection (cc),  
7 the maximum prepayment fees and penalties  
8 which may be charged or collected under the  
9 terms of the credit transaction;

10 “(F) all prepayment fees or penalties that  
11 are incurred by the consumer if the loan refi-  
12 nances a previous loan made or currently held  
13 by the same creditor or an affiliate of the cred-  
14 itor; and”.

15 (2) CALCULATION OF POINTS AND FEES FOR  
16 OPEN-END CONSUMER CREDIT PLANS.—Section  
17 103(aa) of the Truth in Lending Act (15 U.S.C.  
18 1602(aa)) is amended—

19 (A) by redesignating paragraph (5) as  
20 paragraph (6); and

21 (B) by inserting after paragraph (4) the  
22 following new paragraph:

23 “(5) CALCULATION OF POINTS AND FEES FOR  
24 OPEN-END CONSUMER CREDIT PLANS.—In the case  
25 of open-end consumer credit plans, points and fees

1 shall be calculated, for purposes of this section and  
2 section 129, by adding the total points and fees  
3 known at or before closing, including the maximum  
4 prepayment penalties which may be charged or col-  
5 lected under the terms of the credit transaction, plus  
6 the minimum additional fees the consumer would be  
7 required to pay to draw down an amount equal to  
8 the total credit line.”.

9 (d) HIGH COST MORTGAGE LENDER.—Section  
10 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f))  
11 is amended by striking the last sentence and inserting the  
12 following new sentence: “Any person who originates or  
13 brokers 2 or more mortgages referred to in subsection (aa)  
14 in any 12-month period, any person who originates 1 or  
15 more such mortgages through a mortgage broker in any  
16 12 month period, or, in connection with a table funding  
17 transaction of such a mortgage, any person to whom the  
18 obligation is initially assigned at or after settlement shall  
19 be considered to be a creditor for purposes of this title.”.

20 (e) BONA FIDE DISCOUNT LOAN DISCOUNT POINTS  
21 AND PREPAYMENT PENALTIES.—Section 103 of the  
22 Truth in Lending Act (15 U.S.C. 1602) is amended by  
23 inserting after subsection (cc) (as added by section 121)  
24 the following new subsection:

1           “(dd) BONA FIDE DISCOUNT POINTS AND PREPAY-  
2 MENT PENALTIES.—For the purposes of determining the  
3 amount of points and fees for purposes of subsection (aa),  
4 either the amounts described in paragraphs (1) or (4) of  
5 the following paragraphs, but not both, may be excluded:

6           “(1) EXCLUSION OF BONA FIDE DISCOUNT  
7 POINTS.—The discount points described in 1 of the  
8 following subparagraphs shall be excluded from de-  
9 termining the amounts of points and fees with re-  
10 spect to a high-cost mortgage for purposes of sub-  
11 section (aa):

12           “(A) Up to and including 2 bona fide dis-  
13 count points payable by the consumer in con-  
14 nection with the mortgage, but only if the inter-  
15 est rate from which the mortgage’s interest rate  
16 will be discounted does not exceed by more than  
17 1 percentage point the required net yield for a  
18 90-day standard mandatory delivery commit-  
19 ment for a reasonably comparable loan from ei-  
20 ther the Federal National Mortgage Association  
21 or the Federal Home Loan Mortgage Corpora-  
22 tion, whichever is greater.

23           “(B) Unless 2 bona fide discount points  
24 have been excluded under subparagraph (A), up  
25 to and including 1 bona fide discount point pay-

1           able by the consumer in connection with the  
2           mortgage, but only if the interest rate from  
3           which the mortgage's interest rate will be dis-  
4           counted does not exceed by more than 2 per-  
5           centage points the required net yield for a 90-  
6           day standard mandatory delivery commitment  
7           for a reasonably comparable loan from either  
8           the Federal National Mortgage Association or  
9           the Federal Home Loan Mortgage Corporation,  
10          whichever is greater.

11           “(2) DEFINITION.—For purposes of paragraph  
12          (1), the term ‘bona fide discount points’ means loan  
13          discount points which are knowingly paid by the con-  
14          sumer for the purpose of reducing, and which in fact  
15          result in a bona fide reduction of, the interest rate  
16          or time-price differential applicable to the mortgage.

17           “(3) EXCEPTION FOR INTEREST RATE REDUC-  
18          TIONS INCONSISTENT WITH INDUSTRY NORMS.—  
19          Paragraph (1) shall not apply to discount points  
20          used to purchase an interest rate reduction unless  
21          the amount of the interest rate reduction purchased  
22          is reasonably consistent with established industry  
23          norms and practices for secondary mortgage market  
24          transactions.

1           “(4) ALLOWANCE OF CONVENTIONAL PREPAY-  
2           MENT PENALTY.—Subsection (aa)(1)(4)(E) shall not  
3           apply so as to include a prepayment penalty or fee  
4           that is authorized by law other than this title and  
5           may be imposed pursuant to the terms of a high-cost  
6           mortgage (or other consumer credit transaction se-  
7           cured by the consumer’s principal dwelling) if—

8                   “(A) the annual percentage rate applicable  
9                   with respect to such mortgage or transaction  
10                  (as determined for purposes of subsection  
11                  (aa)(1)(A)(i))—

12                           “(i) in the case of a first mortgage on  
13                           the consumer’s principal dwelling, does not  
14                           exceed by more than 2 percentage points  
15                           the yield on Treasury securities having  
16                           comparable periods of maturity on the  
17                           15th day of the month immediately pre-  
18                           ceding the month in which the application  
19                           for the extension of credit is received by  
20                           the creditor; or

21                           “(ii) in the case of a subordinate or  
22                           junior mortgage on the consumer’s prin-  
23                           cipal dwelling, does not exceed by more  
24                           than 4 percentage points the yield on such  
25                           Treasury securities; and

1           “(B) the total amount of any prepayment  
2           fees or penalties permitted under the terms of  
3           the high-cost mortgage or transaction does not  
4           exceed 2 percent of the amount prepaid.”.

5 **SEC. 302. AMENDMENTS TO EXISTING REQUIREMENTS FOR**  
6 **CERTAIN MORTGAGES.**

7           (a) **PREPAYMENT PENALTY PROVISIONS.**—Section  
8 129(e)(2) of the Truth in Lending Act (15 U.S.C.  
9 1639(e)(2)) is amended—

10           (1) by striking “and” after the semicolon at the  
11           end of subparagraph (C);

12           (2) by redesignating subparagraph (D) as sub-  
13           paragraph (E); and

14           (3) by inserting after subparagraph (C) the fol-  
15           lowing new subparagraph:

16           “(D) the amount of the principal obliga-  
17           tion of the mortgage exceeds the maximum  
18           principal obligation limitation (for the applica-  
19           ble size residence) under section 203(b)(2) of  
20           the National Housing Act for the area in which  
21           the residence subject to the mortgage is located;  
22           and”.

23           (b) **NO BALLOON PAYMENTS.**—Section 129(e) of the  
24 Truth in Lending Act (15 U.S.C. 1639(e)) is amended to  
25 read as follows:

1           “(e) NO BALLOON PAYMENTS.—No high-cost mort-  
2 gage may contain a scheduled payment that is more than  
3 twice as large as the average of earlier scheduled pay-  
4 ments. This subsection shall not apply when the payment  
5 schedule is adjusted to the seasonal or irregular income  
6 of the consumer.”.

7           (c) NO LENDING WITHOUT DUE REGARD TO ABIL-  
8 ITY TO REPAY.—Section 129(h) of the Truth in Lending  
9 Act (15 U.S.C. 1639(h)) is amended—

10           (1) by striking “PAYMENT ABILITY OF CON-  
11 SUMER.—A creditor shall not” and inserting “PAY-  
12 MENT ABILITY OF CONSUMER.—

13           “(1) PATTERN OR PRACTICE.—

14           “(A) IN GENERAL.—A creditor shall not”;

15           (2) by inserting after subparagraph (A) (as so  
16 designated by paragraph (1) of this subsection) the  
17 following new subparagraph:

18           “(B) PRESUMPTION OF VIOLATION.—

19           There shall be a presumption that a creditor  
20 has violated this subsection if the creditor en-  
21 engages in a pattern or practice of making high-  
22 cost mortgages without verifying or docu-  
23 menting the repayment ability of consumers  
24 with respect to such mortgages.”; and

1           (3) by adding at the end the following new  
2 paragraph:

3           “(2) PROHIBITION ON EXTENDING CREDIT  
4 WITHOUT REGARD TO PAYMENT ABILITY OF CON-  
5 SUMER.—

6           “(A) IN GENERAL.—A creditor may not  
7 extend credit to a consumer under a high-cost  
8 mortgage unless a reasonable creditor would be-  
9 lieve at the time the mortgage is closed that the  
10 consumer or consumers that are residing or will  
11 reside in the residence subject to the mortgage  
12 will be able to make the scheduled payments as-  
13 sociated with the mortgage, based upon a con-  
14 sideration of current and expected income, cur-  
15 rent obligations, employment status, and other  
16 financial resources, other than equity in the res-  
17 idence.

18           “(B) PRESUMPTION OF ABILITY.—For  
19 purposes of this subsection, there shall be a re-  
20 buttable presumption that a consumer is able to  
21 make the scheduled payments to repay the obli-  
22 gation if, at the time the high-cost mortgage is  
23 consummated, the consumer’s total monthly  
24 debts, including amounts under the mortgage,  
25 do not exceed 50 percent of his or her monthly

1 gross income as verified by tax returns, payroll  
2 receipts, or other third-party income  
3 verification.”.

4 **SEC. 303. ADDITIONAL REQUIREMENTS FOR CERTAIN**  
5 **MORTGAGES.**

6 (a) **ADDITIONAL REQUIREMENTS FOR CERTAIN**  
7 **MORTGAGES.**—Section 129 of the Truth in Lending Act  
8 (15 U.S.C. 1639) is amended—

9 (1) by redesignating subsections (j), (k) and (l)  
10 as subsections (n), (o) and (p) respectively; and

11 (2) by inserting after subsection (i) the fol-  
12 lowing new subsections:

13 “(j) **RECOMMENDED DEFAULT.**—No creditor shall  
14 recommend or encourage default on an existing loan or  
15 other debt prior to and in connection with the closing or  
16 planned closing of a high-cost mortgage that refinances  
17 all or any portion of such existing loan or debt.

18 “(k) **LATE FEES.**—

19 “(1) **IN GENERAL.**—No creditor may impose a  
20 late payment charge or fee in connection with a  
21 high-cost mortgage—

22 “(A) in an amount in excess of 4 percent  
23 of the amount of the payment past due;

24 “(B) unless the loan documents specifically  
25 authorize the charge or fee;

1           “(C) before the end of the 15-day period  
2           beginning on the date the payment is due, or in  
3           the case of a loan on which interest on each in-  
4           stallment is paid in advance, before the end of  
5           the 30-day period beginning on the date the  
6           payment is due; or

7           “(D) more than once with respect to a sin-  
8           gle late payment.

9           “(2) COORDINATION WITH SUBSEQUENT LATE  
10          FEES.—If a payment is otherwise a full payment for  
11          the applicable period and is paid on its due date or  
12          within an applicable grace period, and the only delin-  
13          quency or insufficiency of payment is attributable to  
14          any late fee or delinquency charge assessed on any  
15          earlier payment, no late fee or delinquency charge  
16          may be imposed on such payment.

17          “(3) FAILURE TO MAKE INSTALLMENT PAY-  
18          MENT.—If, in the case of a loan agreement the  
19          terms of which provide that any payment shall first  
20          be applied to any past due principal balance, the  
21          consumer fails to make an installment payment and  
22          the consumer subsequently resumes making install-  
23          ment payments but has not paid all past due install-  
24          ments, the creditor may impose a separate late pay-  
25          ment charge or fee for any principal due (without

1 deduction due to late fees or related fees) until the  
2 default is cured.

3 “(l) ACCELERATION OF DEBT.—No high-cost mort-  
4 gage may contain a provision which permits the creditor,  
5 in its sole discretion, to accelerate the indebtedness. This  
6 provision shall not apply when repayment of the loan has  
7 been accelerated by default, pursuant to a due-on-sale pro-  
8 vision, or pursuant to a material violation of some other  
9 provision of the loan documents unrelated to the payment  
10 schedule.

11 “(m) RESTRICTION ON FINANCING POINTS AND  
12 FEES.—No creditor may directly or indirectly finance, in  
13 connection with any high-cost mortgage, any of the fol-  
14 lowing:

15 “(1) Any prepayment fee or penalty payable by  
16 the consumer in a refinancing transaction if the  
17 creditor or an affiliate of the creditor is the  
18 noteholder of the note being refinanced.

19 “(2) Any points or fees.”

20 (b) PROHIBITIONS ON EVASIONS.—Section 129 of  
21 the Truth in Lending Act (15 U.S.C. 1639) is amended  
22 by inserting after subsection (p) (as so redesignated by  
23 subsection (a)(1)) the following new subsection:

24 “(q) PROHIBITIONS ON EVASIONS, STRUCTURING OF  
25 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A

1 creditor may not take any action in connection with a  
2 high-cost mortgage—

3 “(1) to structure a loan transaction as an open-  
4 end credit plan or another form of loan for the pur-  
5 pose and with the intent of evading the provisions of  
6 this title; or

7 “(2) to divide any loan transaction into sepa-  
8 rate parts for the purpose and with the intent of  
9 evading provisions of this title.”.

10 (c) MODIFICATION OR DEFERRAL FEES.—Section  
11 129 of the Truth in Lending Act (15 U.S.C. 1639) is  
12 amended by inserting after subsection (q) (as added by  
13 subsection (b) of this section) the following new sub-  
14 section:

15 “(r) MODIFICATION AND DEFERRAL FEES PROHIB-  
16 ITED.—A creditor may not charge a consumer any fee to  
17 modify, renew, extend, or amend a high-cost mortgage, or  
18 to defer any payment due under the terms of such mort-  
19 gage, unless the modification, renewal, extension or  
20 amendment results in a lower annual percentage rate on  
21 the mortgage for the consumer and then only if the  
22 amount of the fee is comparable to fees imposed for simi-  
23 lar transactions in connection with consumer credit trans-  
24 actions that are secured by a consumer’s principal dwell-  
25 ing and are not high-cost mortgages.”.

1           (d) PAYOFF STATEMENT.—Section 129 of the Truth  
2 in Lending Act (15 U.S.C. 1639) is amended by inserting  
3 after subsection (r) (as added by subsection (c) of this  
4 section) the following new subsection:

5           “(s) PAYOFF STATEMENT.—

6                 “(1) FEES.—

7                         “(A) IN GENERAL.—Except as provided in  
8 subparagraph (B), no creditor or servicer may  
9 charge a fee for informing or transmitting to  
10 any person the balance due to pay off the out-  
11 standing balance on a high-cost mortgage.

12                         “(B) TRANSACTION FEE.—When payoff in-  
13 formation referred to in subparagraph (A) is  
14 provided by facsimile transmission or by a cou-  
15 rier service, a creditor or servicer may charge a  
16 processing fee to cover the cost of such trans-  
17 mission or service in an amount not to exceed  
18 an amount that is comparable to fees imposed  
19 for similar services provided in connection with  
20 consumer credit transactions that are secured  
21 by the consumer’s principal dwelling and are  
22 not high-cost mortgages.

23                         “(C) FEE DISCLOSURE.—Prior to charging  
24 a transaction fee as provided in subparagraph  
25 (B), a creditor or servicer shall disclose that

1 payoff balances are available for free pursuant  
2 to subparagraph (A).

3 “(D) MULTIPLE REQUESTS.—If a creditor  
4 or servicer has provided payoff information re-  
5 ferred to in subparagraph (A) without charge,  
6 other than the transaction fee allowed by sub-  
7 paragraph (B), on 4 occasions during a cal-  
8 endar year, the creditor or servicer may there-  
9 after charge a reasonable fee for providing such  
10 information during the remainder of the cal-  
11 endar year.

12 “(2) PROMPT DELIVERY.—Payoff balances shall  
13 be provided within 5 business days after receiving a  
14 request by a consumer or a person authorized by the  
15 consumer to obtain such information.”.

16 (e) PRE-LOAN COUNSELING REQUIRED.—Section  
17 129 of the Truth in Lending Act (15 U.S.C. 1639) is  
18 amended by inserting after subsection (s) (as added by  
19 subsection (d) of this section) the following new sub-  
20 section:

21 “(t) PRE-LOAN COUNSELING.—

22 “(1) IN GENERAL.—A creditor may not extend  
23 credit to a consumer under a high-cost mortgage  
24 without first receiving certification from a counselor  
25 that is approved by the Secretary of Housing and

1 Urban Development, or at the discretion of the Sec-  
2 retary, a state housing finance authority, that the  
3 consumer has received counseling on the advisability  
4 of the mortgage. Such counselor shall not be em-  
5 ployed by the creditor or an affiliate of the creditor  
6 or be affiliated with the creditor.

7 “(2) DISCLOSURES REQUIRED PRIOR TO COUN-  
8 SELING.—No counselor may certify that a consumer  
9 has received counseling on the advisability of the  
10 high-cost mortgage unless the counselor can verify  
11 that the consumer has received each statement re-  
12 quired (in connection with such loan) by this section  
13 or the Real Estate Settlement Procedures Act of  
14 1974 with respect to the transaction.

15 “(3) REGULATIONS.—The Secretary of Housing  
16 and Urban Development may prescribe such regula-  
17 tions as the Secretary determines to be appropriate  
18 to carry out the requirements of paragraph (1).”.

19 (f) FLIPPING PROHIBITED.—Section 129 of the  
20 Truth in Lending Act (15 U.S.C. 1639) is amended by  
21 inserting after subsection (t) (as added by subsection (e))  
22 the following new subsection:

23 “(u) FLIPPING.—

1           “(1) IN GENERAL.—No creditor may knowingly  
2 or intentionally engage in the unfair act or practice  
3 of flipping in connection with a high-cost mortgage.

4           “(2) FLIPPING DEFINED.—For purposes of this  
5 subsection, the term ‘flipping’ means the making of  
6 a loan or extension of credit in the form a high-cost  
7 mortgage to a consumer which refinances an existing  
8 mortgage when the new loan or extension of credit  
9 does not have reasonable, tangible net benefit to the  
10 consumer considering all of the circumstances, in-  
11 cluding the terms of both the new and the refi-  
12 nanced loans or credit, the cost of the new loan or  
13 credit, and the consumer’s circumstances.

14           “(3) TANGIBLE NET BENEFIT.—The Board  
15 may prescribe regulations, in the discretion of the  
16 Board, defining the term ‘tangible net benefit’ for  
17 purposes of this subsection.”.

18 **SEC. 304. AMENDMENT TO PROVISION GOVERNING COR-**  
19 **RECTION OF ERRORS.**

20           Section 130(b) of the Truth in Lending Act (15  
21 U.S.C. 1640(b)) is amended to read as follows:

22           “(b) CORRECTION OF ERRORS.—A creditor has no li-  
23 ability under this section or section 108 or 112 for any  
24 failure to comply with any requirement imposed under this  
25 chapter or chapter 5, if—

1           “(1) within 30 days of the loan closing and  
2 prior to the institution of any action, the consumer  
3 is notified of or discovers the violation, appropriate  
4 restitution is made, and whatever adjustments are  
5 necessary are made to the loan to either, at the  
6 choice of the consumer—

7           “(A) make the loan satisfy the require-  
8 ments of this chapter; or

9           “(B) in the case of a high-cost mortgage,  
10 change the terms of the loan in a manner bene-  
11 ficial to the consumer so that the loan will no  
12 longer be a high-cost mortgage; or

13           “(2) within 60 days of the creditor’s discovery  
14 or receipt of notification of an unintentional viola-  
15 tion or bona fide error as described in subsection (c)  
16 and prior to the institution of any action, the con-  
17 sumer is notified of the compliance failure, appro-  
18 priate restitution is made, and whatever adjustments  
19 are necessary are made to the loan to either, at the  
20 choice of the consumer—

21           “(A) make the loan satisfy the require-  
22 ments of this chapter; or

23           “(B) in the case of a high-cost mortgage,  
24 change the terms of the loan in a manner bene-

1            ficial so that the loan will no longer be a high-  
2            cost mortgage.”.

3 **SEC. 305. REGULATIONS.**

4            (a) IN GENERAL.—The Board of Governors of the  
5 Federal Reserve System shall publish regulations imple-  
6 menting this title and the amendments made by this title  
7 in final form before the end of the 6-month period begin-  
8 ning on the date of the enactment of this Act.

9            (b) CONSUMER MORTGAGE EDUCATION.—

10            (1) REGULATIONS.—The Board of Governors of  
11 the Federal Reserve System may prescribe regula-  
12 tions requiring or encouraging creditors to provide  
13 consumer mortgage education to prospective cus-  
14 tomers or direct such customers to qualified con-  
15 sumer mortgage education or counseling programs  
16 in the vicinity of the residence of the consumer.

17            (2) COORDINATION WITH STATE LAW.—No re-  
18 quirement established by the Board of Governors of  
19 the Federal Reserve System pursuant to paragraph  
20 (1) shall be construed as affecting or superseding  
21 any requirement under the law of any State with re-  
22 spect to consumer mortgage counseling or education.

1     **TITLE IV—OFFICE OF HOUSING**  
2                     **COUNSELING**

3     **SEC. 401. SHORT TITLE.**

4             This title may be cited as the “Expand and Preserve  
5 Home Ownership Through Counseling Act”.

6     **SEC. 402. ESTABLISHMENT OF OFFICE OF HOUSING COUN-**  
7                     **SELING.**

8             Section 4 of the Department of Housing and Urban  
9 Development Act (42 U.S.C. 3533) is amended by adding  
10 at the end the following new subsection:

11             “(g) OFFICE OF HOUSING COUNSELING.—

12                 “(1) ESTABLISHMENT.—There is established,  
13 in the Office of the Secretary, the Office of Housing  
14 Counseling.

15                 “(2) DIRECTOR.—There is established the posi-  
16 tion of Director of Housing Counseling. The Direc-  
17 tor shall be the head of the Office of Housing Coun-  
18 seling and shall be appointed by the Secretary. Such  
19 position shall be a career-reserved position in the  
20 Senior Executive Service.

21                 “(3) FUNCTIONS.—

22                     “(A) IN GENERAL.—The Director shall  
23 have ultimate responsibility within the Depart-  
24 ment, except for the Secretary, for all activities  
25 and matters relating to homeownership coun-

1           seling and rental housing counseling, includ-  
2           ing—

3                   “(i) research, grant administration,  
4                   public outreach, and policy development re-  
5                   lating to such counseling; and

6                   “(ii) establishment, coordination, and  
7                   administration of all regulations, require-  
8                   ments, standards, and performance meas-  
9                   ures under programs and laws adminis-  
10                  tered by the Department that relate to  
11                  housing counseling, homeownership coun-  
12                  seling (including maintenance of homes),  
13                  mortgage-related counseling (including  
14                  home equity conversion mortgages and  
15                  credit protection options to avoid fore-  
16                  closure), and rental housing counseling, in-  
17                  cluding the requirements, standards, and  
18                  performance measures relating to housing  
19                  counseling.

20                  “(B) SPECIFIC FUNCTIONS.—The Director  
21                  shall carry out the functions assigned to the Di-  
22                  rector and the Office under this section and any  
23                  other provisions of law. Such functions shall in-  
24                  clude establishing rules necessary for—

1           “(i) the counseling procedures under  
2           section 106(g)(1) of the Housing and  
3           Urban Development Act of 1968 (12  
4           U.S.C. 1701x(h)(1));

5           “(ii) carrying out all other functions  
6           of the Secretary under section 106(g) of  
7           the Housing and Urban Development Act  
8           of 1968, including the establishment, oper-  
9           ation, and publication of the availability of  
10          the toll-free telephone number under para-  
11          graph (2) of such section;

12          “(iii) carrying out section 5 of the  
13          Real Estate Settlement Procedures Act of  
14          1974 (12 U.S.C. 2604) for home buying  
15          information booklets prepared pursuant to  
16          such section;

17          “(iv) carrying out the certification  
18          program under section 106(e) of the Hous-  
19          ing and Urban Development Act of 1968  
20          (12 U.S.C. 1701x(e));

21          “(v) carrying out the assistance pro-  
22          gram under section 106(a)(4) of the Hous-  
23          ing and Urban Development Act of 1968,  
24          including criteria for selection of applica-  
25          tions to receive assistance;

1                   “(vi) carrying out any functions re-  
2                   garding abusive, deceptive, or unscrupulous  
3                   lending practices relating to residential  
4                   mortgage loans that the Secretary con-  
5                   siders appropriate, which shall include con-  
6                   ducting the study under section 6 of the  
7                   Expand and Preserve Home Ownership  
8                   Through Counseling Act;

9                   “(vii) providing for operation of the  
10                  advisory committee established under para-  
11                  graph (4) of this subsection;

12                  “(viii) collaborating with community-  
13                  based organizations with expertise in the  
14                  field of housing counseling; and

15                  “(ix) providing for the building of ca-  
16                  pacity to provide housing counseling serv-  
17                  ices in areas that lack sufficient services.

18                  “(4) ADVISORY COMMITTEE.—

19                  “(A) IN GENERAL.—The Secretary shall  
20                  appoint an advisory committee to provide advice  
21                  regarding the carrying out of the functions of  
22                  the Director.

23                  “(B) MEMBERS.—Such advisory committee  
24                  shall consist of not more than 12 individuals,  
25                  and the membership of the committee shall

1           equally represent all aspects of the mortgage  
2           and real estate industry, including consumers.

3           “(C) TERMS.—Except as provided in sub-  
4           paragraph (D), each member of the advisory  
5           committee shall be appointed for a term of 3  
6           years. Members may be reappointed at the dis-  
7           cretion of the Secretary.

8           “(D) TERMS OF INITIAL APPOINTEES.—As  
9           designated by the Secretary at the time of ap-  
10          pointment, of the members first appointed to  
11          the advisory committee, 4 shall be appointed for  
12          a term of 1 year and 4 shall be appointed for  
13          a term of 2 years.

14          “(E) PROHIBITION OF PAY; TRAVEL EX-  
15          PENSES.—Members of the advisory committee  
16          shall serve without pay, but shall receive travel  
17          expenses, including per diem in lieu of subsist-  
18          ence, in accordance with applicable provisions  
19          under subchapter I of chapter 57 of title 5,  
20          United States Code.

21          “(F) ADVISORY ROLE ONLY.—The advi-  
22          sory committee shall have no role in reviewing  
23          or awarding housing counseling grants.

24          “(5) SCOPE OF HOMEOWNERSHIP COUN-  
25          SELING.—In carrying out the responsibilities of the

1 Director, the Director shall ensure that homeowner-  
2 ship counseling provided by, in connection with, or  
3 pursuant to any function, activity, or program of the  
4 Department addresses the entire process of home-  
5 ownership, including the decision to purchase a  
6 home, the selection and purchase of a home, issues  
7 arising during or affecting the period of ownership  
8 of a home (including refinancing, default and fore-  
9 closure, and other financial decisions), and the sale  
10 or other disposition of a home.”.

11 **SEC. 403. COUNSELING PROCEDURES.**

12 (a) IN GENERAL.—Section 106 of the Housing and  
13 Urban Development Act of 1968 (12 U.S.C. 1701x) is  
14 amended by adding at the end the following new sub-  
15 section:

16 “(g) PROCEDURES AND ACTIVITIES.—

17 “(1) COUNSELING PROCEDURES.—

18 “(A) IN GENERAL.—The Secretary shall  
19 establish, coordinate, and monitor the adminis-  
20 tration by the Department of Housing and  
21 Urban Development of the counseling proce-  
22 dures for homeownership counseling and rental  
23 housing counseling provided in connection with  
24 any program of the Department, including all  
25 requirements, standards, and performance

1 measures that relate to homeownership and  
2 rental housing counseling.

3 “(B) HOMEOWNERSHIP COUNSELING.—  
4 For purposes of this subsection and as used in  
5 the provisions referred to in this subparagraph,  
6 the term ‘homeownership counseling’ means  
7 counseling related to homeownership and resi-  
8 dential mortgage loans. Such term includes  
9 counseling related to homeownership and resi-  
10 dential mortgage loans that is provided pursu-  
11 ant to—

12 “(i) section 105(a)(20) of the Housing  
13 and Community Development Act of 1974  
14 (42 U.S.C. 5305(a)(20));

15 “(ii) in the United States Housing  
16 Act of 1937—

17 “(I) section 9(e) (42 U.S.C.  
18 1437g(e));

19 “(II) section 8(y)(1)(D) (42  
20 U.S.C. 1437f(y)(1)(D));

21 “(III) section 18(a)(4)(D) (42  
22 U.S.C. 1437p(a)(4)(D));

23 “(IV) section 23(c)(4) (42 U.S.C.  
24 1437u(c)(4));

1 “(V) section 32(e)(4) (42 U.S.C.  
2 1437z-4(e)(4));

3 “(VI) section 33(d)(2)(B) (42  
4 U.S.C. 1437z-5(d)(2)(B));

5 “(VII) sections 302(b)(6) and  
6 303(b)(7) (42 U.S.C. 1437aaa-  
7 1(b)(6), 1437aaa-2(b)(7)); and

8 “(VIII) section 304(c)(4) (42  
9 U.S.C. 1437aaa-3(c)(4));

10 “(iii) section 302(a)(4) of the Amer-  
11 ican Homeownership and Economic Oppor-  
12 tunity Act of 2000 (42 U.S.C. 1437f note);

13 “(iv) sections 233(b)(2) and 258(b) of  
14 the Cranston-Gonzalez National Affordable  
15 Housing Act (42 U.S.C. 12773(b)(2),  
16 12808(b));

17 “(v) this section and section 101(e) of  
18 the Housing and Urban Development Act  
19 of 1968 (12 U.S.C. 1701x, 1701w(e));

20 “(vi) section 220(d)(2)(G) of the Low-  
21 Income Housing Preservation and Resident  
22 Homeownership Act of 1990 (12 U.S.C.  
23 4110(d)(2)(G));

24 “(vii) sections 422(b)(6), 423(b)(7),  
25 424(c)(4), 442(b)(6), and 443(b)(6) of the

1 Cranston-Gonzalez National Affordable  
2 Housing Act (42 U.S.C. 12872(b)(6),  
3 12873(b)(7), 12874(c)(4), 12892(b)(6),  
4 and 12893(b)(6));

5 “(viii) section 491(b)(1)(F)(iii) of the  
6 McKinney-Vento Homeless Assistance Act  
7 (42 U.S.C. 11408(b)(1)(F)(iii));

8 “(ix) sections 202(3) and  
9 810(b)(2)(A) of the Native American  
10 Housing and Self-Determination Act of  
11 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

12 “(x) in the National Housing Act—

13 “(I) in section 203 (12 U.S.C.  
14 1709), the penultimate undesignated  
15 paragraph of paragraph (2) of sub-  
16 section (b), subsection (c)(2)(A), and  
17 subsection (r)(4);

18 “(II) subsections (a) and (c)(3)  
19 of section 237 (12 U.S.C. 1715z–2);  
20 and

21 “(III) subsections (d)(2)(B) and  
22 (m)(1) of section 255 (12 U.S.C.  
23 1715z–20);

1                   “(xi) section 502(h)(4)(B) of the  
2                   Housing Act of 1949 (42 U.S.C.  
3                   1472(h)(4)(B)); and

4                   “(xii) section 508 of the Housing and  
5                   Urban Development Act of 1970 (12  
6                   U.S.C. 1701z-7).

7                   “(C) RENTAL HOUSING COUNSELING.—  
8                   For purposes of this subsection, the term ‘rent-  
9                   al housing counseling’ means counseling related  
10                  to rental of residential property, which may in-  
11                  clude counseling regarding future homeown-  
12                  ership opportunities and providing referrals for  
13                  renters and prospective renters to entities pro-  
14                  viding counseling and shall include counseling  
15                  related to such topics that is provided pursuant  
16                  to—

17                  “(i) section 105(a)(20) of the Housing  
18                  and Community Development Act of 1974  
19                  (42 U.S.C. 5305(a)(20));

20                  “(ii) in the United States Housing  
21                  Act of 1937—

22                         “(I) section 9(e) (42 U.S.C.  
23                         1437g(e));

24                         “(II) section 18(a)(4)(D) (42  
25                         U.S.C. 1437p(a)(4)(D));

1 “(III) section 23(c)(4) (42  
2 U.S.C. 1437u(c)(4));

3 “(IV) section 32(e)(4) (42 U.S.C.  
4 1437z-4(e)(4));

5 “(V) section 33(d)(2)(B) (42  
6 U.S.C. 1437z-5(d)(2)(B)); and

7 “(VI) section 302(b)(6) (42  
8 U.S.C. 1437aaa-1(b)(6));

9 “(iii) section 233(b)(2) of the Cran-  
10 ston-Gonzalez National Affordable Housing  
11 Act (42 U.S.C. 12773(b)(2));

12 “(iv) section 106 of the Housing and  
13 Urban Development Act of 1968 (12  
14 U.S.C. 1701x);

15 “(v) section 422(b)(6) of the Cran-  
16 ston-Gonzalez National Affordable Housing  
17 Act (42 U.S.C. 12872(b)(6));

18 “(vi) section 491(b)(1)(F)(iii) of the  
19 McKinney-Vento Homeless Assistance Act  
20 (42 U.S.C. 11408(b)(1)(F)(iii));

21 “(vii) sections 202(3) and  
22 810(b)(2)(A) of the Native American  
23 Housing and Self-Determination Act of  
24 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));  
25 and

1                   “(viii) the rental assistance program  
2                   under section 8 of the United States Hous-  
3                   ing Act of 1937 (42 U.S.C. 1437f).

4                   “(2) STANDARDS FOR MATERIALS.—The Sec-  
5                   retary, in conjunction with the advisory committee  
6                   established under subsection (g)(4) of the Depart-  
7                   ment of Housing and Urban Development Act, shall  
8                   establish standards for materials and forms to be  
9                   used, as appropriate, by organizations providing  
10                  homeownership counseling services, including any re-  
11                  cipients of assistance pursuant to subsection (a)(4).

12                  “(3) MORTGAGE SOFTWARE SYSTEMS.—

13                  “(A) CERTIFICATION.—The Secretary shall  
14                  provide for the certification of various computer  
15                  software programs for consumers to use in eval-  
16                  uating different residential mortgage loan pro-  
17                  posals. The Secretary shall require, for such  
18                  certification, that the mortgage software sys-  
19                  tems take into account—

20                  “(i) the consumer’s financial situation  
21                  and the cost of maintaining a home, in-  
22                  cluding insurance, taxes, and utilities;

23                  “(ii) the amount of time the consumer  
24                  expects to remain in the home or expected  
25                  time to maturity of the loan;

1                   “(iii) such other factors as the Sec-  
2                   retary considers appropriate to assist the  
3                   consumer in evaluating whether to pay  
4                   points, to lock in an interest rate, to select  
5                   an adjustable or fixed rate loan, to select  
6                   a conventional or government-insured or  
7                   guaranteed loan and to make other choices  
8                   during the loan application process.

9                   If the Secretary determines that available exist-  
10                  ing software is inadequate to assist consumers  
11                  during the residential mortgage loan application  
12                  process, the Secretary shall arrange for the de-  
13                  velopment by private sector software companies  
14                  of new mortgage software systems that meet  
15                  the Secretary’s specifications.

16                  “(B) USE AND INITIAL AVAILABILITY.—  
17                  Such certified computer software programs  
18                  shall be used to supplement, not replace, hous-  
19                  ing counseling. The Secretary shall provide that  
20                  such programs are initially used only in connec-  
21                  tion with the assistance of housing counselors  
22                  certified pursuant to subsection (e).

23                  “(C) AVAILABILITY.—After a period of ini-  
24                  tial availability under subparagraph (B) as the  
25                  Secretary considers appropriate, the Secretary

1 shall take reasonable steps to make mortgage  
2 software systems certified pursuant to this  
3 paragraph widely available through the Internet  
4 and at public locations, including public librar-  
5 ies, senior-citizen centers, public housing sites,  
6 offices of public housing agencies that admin-  
7 ister rental housing assistance vouchers, and  
8 housing counseling centers.

9 “(4) NATIONAL PUBLIC SERVICE MULTIMEDIA  
10 CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

11 “(A) IN GENERAL.—The Director of Hous-  
12 ing Counseling shall develop, implement, and  
13 conduct national public service multimedia cam-  
14 paigns designed to make persons facing mort-  
15 gage foreclosure, persons considering a  
16 subprime mortgage loan to purchase a home, el-  
17 derly persons, persons who face language bar-  
18 riers, low-income persons, and other potentially  
19 vulnerable consumers aware that it is advisable,  
20 before seeking or maintaining a residential  
21 mortgage loan, to obtain homeownership coun-  
22 seling from an unbiased and reliable sources  
23 and that such homeownership counseling is  
24 available, including through programs spon-

1           sored by the Secretary of Housing and Urban  
2           Development.

3           “(B) CONTACT INFORMATION.—Each seg-  
4           ment of the multimedia campaign under sub-  
5           paragraph (A) shall publicize the toll-free tele-  
6           phone number and web site of the Department  
7           of Housing and Urban Development through  
8           which persons seeking housing counseling can  
9           locate a housing counseling agency in their  
10          State that is certified by the Secretary of Hous-  
11          ing and Urban Development and can provide  
12          advice on buying a home, renting, defaults,  
13          foreclosures, credit issues, and reverse mort-  
14          gages.

15          “(C) AUTHORIZATION OF APPROPRIA-  
16          TIONS.—There are authorized to be appro-  
17          priated to the Secretary, not to exceed  
18          \$3,000,000 for fiscal years 2008, 2009, and  
19          2010, for the develop, implement, and conduct  
20          of national public service multimedia campaigns  
21          under this paragraph.

22          “(5) EDUCATION PROGRAMS.—The Secretary  
23          shall provide advice and technical assistance to  
24          States, units of general local government, and non-  
25          profit organizations regarding the establishment and

1 operation of, including assistance with the develop-  
2 ment of content and materials for, educational pro-  
3 grams to inform and educate consumers, particularly  
4 those most vulnerable with respect to residential  
5 mortgage loans (such as elderly persons, persons  
6 facing language barriers, low-income persons, and  
7 other potentially vulnerable consumers), regarding  
8 home mortgages, mortgage refinancing, home equity  
9 loans, and home repair loans.”.

10 (b) CONFORMING AMENDMENTS TO GRANT PRO-  
11 GRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZA-  
12 TIONS.—Section 106(c)(5)(A)(ii) of the Housing and  
13 Urban Development Act of 1968 (12 U.S.C.  
14 1701x(c)(5)(A)(ii)) is amended—

15 (1) in subclause (II), by striking “and” at the  
16 end;

17 (2) in subclause (III) by striking the period at  
18 the end and inserting “; and”; and

19 (3) by inserting after subclause (III) the fol-  
20 lowing new subclause:

21 “(IV) notify the housing or mort-  
22 gage applicant of the availability of  
23 mortgage software systems provided  
24 pursuant to subsection (g)(3).”.

1 **SEC. 404. GRANTS FOR HOUSING COUNSELING ASSIST-**  
2 **ANCE.**

3 Section 106(a) of the Housing and Urban Develop-  
4 ment Act of 1968 (12 U.S.C. 1701x(a)(3)) is amended  
5 by adding at the end the following new paragraph:

6 “(4) HOMEOWNERSHIP AND RENTAL COUNSELING  
7 ASSISTANCE.—

8 “(A) IN GENERAL.—The Secretary shall make  
9 financial assistance available under this paragraph  
10 to States, units of general local governments, and  
11 nonprofit organizations providing homeownership or  
12 rental counseling (as such terms are defined in sub-  
13 section (g)(1)).

14 “(B) QUALIFIED ENTITIES.—The Secretary  
15 shall establish standards and guidelines for eligibility  
16 of organizations (including governmental and non-  
17 profit organizations) to receive assistance under this  
18 paragraph.

19 “(C) DISTRIBUTION.—Assistance made avail-  
20 able under this paragraph shall be distributed in a  
21 manner that encourages efficient and successful  
22 counseling programs.

23 “(D) AUTHORIZATION OF APPROPRIATIONS.—  
24 There are authorized to be appropriated  
25 \$45,000,000 for each of fiscal years 2008 through  
26 2011 for—

1           “(i) the operations of the Office of Hous-  
2           ing Counseling of the Department of Housing  
3           and Urban Development;

4           “(ii) the responsibilities of the Secretary  
5           under paragraphs (2) through (5) of subsection  
6           (g); and

7           “(iii) assistance pursuant to this para-  
8           graph for entities providing homeownership and  
9           rental counseling.”.

10 **SEC. 405. REQUIREMENTS TO USE HUD-CERTIFIED COUN-**  
11 **SELORS UNDER HUD PROGRAMS.**

12           Section 106(e) of the Housing and Urban Develop-  
13           ment Act of 1968 (12 U.S.C. 1701x(e)) is amended—

14           (1) by striking paragraph (1) and inserting the  
15           following new paragraph:

16           “(1) REQUIREMENT FOR ASSISTANCE.—An or-  
17           ganization may not receive assistance for counseling  
18           activities under subsection (a)(1)(iii), (a)(2), (a)(4),  
19           (c), or (d) of this section, or under section 101(e),  
20           unless the organization, or the individuals through  
21           which the organization provides such counseling, has  
22           been certified by the Secretary under this subsection  
23           as competent to provide such counseling.”;

24           (2) in paragraph (2)—

1 (A) by inserting “and for certifying organi-  
2 zations” before the period at the end of the  
3 first sentence; and

4 (B) in the second sentence by striking “for  
5 certification” and inserting “, for certification  
6 of an organization, that each individual through  
7 which the organization provides counseling shall  
8 demonstrate, and, for certification of an indi-  
9 vidual,”;

10 (3) in paragraph (3), by inserting “organiza-  
11 tions and” before “individuals”;

12 (4) by redesignating paragraph (3) as para-  
13 graph (5); and

14 (5) by inserting after paragraph (2) the fol-  
15 lowing new paragraphs:

16 “(3) REQUIREMENT UNDER HUD PROGRAMS.—  
17 Any homeownership counseling or rental housing  
18 counseling (as such terms are defined in subsection  
19 (g)(1)) required under, or provided in connection  
20 with, any program administered by the Department  
21 of Housing and Urban Development shall be pro-  
22 vided only by organizations or counselors certified by  
23 the Secretary under this subsection as competent to  
24 provide such counseling.

1           “(4) OUTREACH.—The Secretary shall take  
2           such actions as the Secretary considers appropriate  
3           to ensure that individuals and organizations pro-  
4           viding homeownership or rental housing counseling  
5           are aware of the certification requirements and  
6           standards of this subsection and of the training and  
7           certification programs under subsection (f).”.

8   **SEC. 406. STUDY OF DEFAULTS AND FORECLOSURES.**

9           The Secretary of Housing and Urban Development  
10          shall conduct an extensive study of the root causes of de-  
11          fault and foreclosure of home loans, using as much empir-  
12          ical data as are available. The study shall also examine  
13          the role of escrow accounts in helping prime and nonprime  
14          borrowers to avoid defaults and foreclosures. Not later  
15          than 12 months after the date of the enactment of this  
16          Act, the Secretary shall submit to the Congress a prelimi-  
17          nary report regarding the study. Not later than 24 months  
18          after such date of enactment, the Secretary shall submit  
19          a final report regarding the results of the study, which  
20          shall include any recommended legislation relating to the  
21          study, and recommendations for best practices and for a  
22          process to identify populations that need counseling the  
23          most.

1 **SEC. 407. DEFINITIONS FOR COUNSELING-RELATED PRO-**  
2 **GRAMS.**

3 Section 106 of the Housing and Urban Development  
4 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-  
5 ceding provisions of this title, is further amended by add-  
6 ing at the end the following new subsection:

7 “(h) DEFINITIONS.—For purposes of this section:

8 “(1) NONPROFIT ORGANIZATION.—The term  
9 ‘nonprofit organization’ has the meaning given such  
10 term in section 104(5) of the Cranston-Gonzalez Na-  
11 tional Affordable Housing Act (42 U.S.C.  
12 12704(5)), except that subparagraph (D) of such  
13 section shall not apply for purposes of this section.

14 “(2) STATE.—The term ‘State’ means each of  
15 the several States, the Commonwealth of Puerto  
16 Rico, the District of Columbia, the Commonwealth  
17 of the Northern Mariana Islands, Guam, the Virgin  
18 Islands, American Samoa, the Trust Territories of  
19 the Pacific, or any other possession of the United  
20 States.

21 “(3) UNIT OF GENERAL LOCAL GOVERN-  
22 MENT.—The term ‘unit of general local government’  
23 means any city, county, parish, town, township, bor-  
24 ough, village, or other general purpose political sub-  
25 division of a State.”.

1 **SEC. 408. UPDATING AND SIMPLIFICATION OF MORTGAGE**  
2 **INFORMATION BOOKLET.**

3 Section 5 of the Real Estate Settlement Procedures  
4 Act of 1974 (12 U.S.C. 2604) is amended—

5 (1) in the section heading, by striking “SPE-  
6 CIAL” and inserting “HOME BUYING” ;

7 (2) by striking subsections (a) and (b) and in-  
8 serting the following new subsections:

9 “(a) PREPARATION AND DISTRIBUTION.—The Sec-  
10 retary shall prepare, at least once every 5 years, a booklet  
11 to help consumers applying for federally related mortgage  
12 loans to understand the nature and costs of real estate  
13 settlement services. The Secretary shall prepare the book-  
14 let in various languages and cultural styles, as the Sec-  
15 retary determines to be appropriate, so that the booklet  
16 is understandable and accessible to homebuyers of dif-  
17 ferent ethnic and cultural backgrounds. The Secretary  
18 shall distribute such booklets to all lenders that make fed-  
19 erally related mortgage loans. The Secretary shall also dis-  
20 tribute to such lenders lists, organized by location, of  
21 homeownership counselors certified under section 106(e)  
22 of the Housing and Urban Development Act of 1968 (12  
23 U.S.C. 1701x(e)) for use in complying with the require-  
24 ment under subsection (c) of this section.

25 “(b) CONTENTS.—Each booklet shall be in such form  
26 and detail as the Secretary shall prescribe and, in addition

1 to such other information as the Secretary may provide,  
2 shall include in plain and understandable language the fol-  
3 lowing information:

4           “(1) A description and explanation of the na-  
5           ture and purpose of the costs incident to a real es-  
6           tate settlement or a federally related mortgage loan.  
7           The description and explanation shall provide gen-  
8           eral information about the mortgage process as well  
9           as specific information concerning, at a minimum—

10                   “(A) balloon payments;

11                   “(B) prepayment penalties; and

12                   “(C) the trade-off between closing costs  
13           and the interest rate over the life of the loan.

14           “(2) An explanation and sample of the uniform  
15           settlement statement required by section 4.

16           “(3) A list and explanation of lending practices,  
17           including those prohibited by the Truth in Lending  
18           Act or other applicable Federal law, and of other un-  
19           fair practices and unreasonable or unnecessary  
20           charges to be avoided by the prospective buyer with  
21           respect to a real estate settlement.

22           “(4) A list and explanation of questions a con-  
23           sumer obtaining a federally related mortgage loan  
24           should ask regarding the loan, including whether the  
25           consumer will have the ability to repay the loan,

1       whether the consumer sufficiently shopped for the  
2       loan, whether the loan terms include prepayment  
3       penalties or balloon payments, and whether the loan  
4       will benefit the borrower.

5               “(5) An explanation of the right of rescission as  
6       to certain transactions provided by sections 125 and  
7       129 of the Truth in Lending Act.

8               “(6) A brief explanation of the nature of a vari-  
9       able rate mortgage and a reference to the booklet  
10       entitled ‘Consumer Handbook on Adjustable Rate  
11       Mortgages’, published by the Board of Governors of  
12       the Federal Reserve System pursuant to section  
13       226.19(b)(1) of title 12, Code of Federal Regula-  
14       tions, or to any suitable substitute of such booklet  
15       that such Board of Governors may subsequently  
16       adopt pursuant to such section.

17               “(7) A brief explanation of the nature of a  
18       home equity line of credit and a reference to the  
19       pamphlet required to be provided under section  
20       127A of the Truth in Lending Act.

21               “(8) Information about homeownership coun-  
22       seling services made available pursuant to section  
23       106(a)(4) of the Housing and Urban Development  
24       Act of 1968 (12 U.S.C. 1701x(a)(4)), a rec-  
25       ommendation that the consumer use such services,

1 and notification that a list of certified providers of  
2 homeownership counseling in the area, and their  
3 contact information, is available.

4 “(9) An explanation of the nature and purpose  
5 of escrow accounts when used in connection with  
6 loans secured by residential real estate and the re-  
7 quirements under section 10 of this Act regarding  
8 such accounts.

9 “(10) An explanation of the choices available to  
10 buyers of residential real estate in selecting persons  
11 to provide necessary services incidental to a real es-  
12 tate settlement.

13 “(11) An explanation of a consumer’s respon-  
14 sibilities, liabilities, and obligations in a mortgage  
15 transaction.

16 “(12) An explanation of the nature and purpose  
17 of real estate appraisals, including the difference be-  
18 tween an appraisal and a home inspection.

19 “(13) Notice that the Office of Housing of the  
20 Department of Housing and Urban Development has  
21 made publicly available a brochure regarding loan  
22 fraud and a World Wide Web address and toll-free  
23 telephone number for obtaining the brochure.

24 The booklet prepared pursuant to this section shall take  
25 into consideration differences in real estate settlement pro-

1 cedures that may exist among the several States and terri-  
2 tories of the United States and among separate political  
3 subdivisions within the same State and territory.”;

4 (3) in subsection (c), by striking the last sen-  
5 tence and inserting the following new sentence:  
6 “Each lender shall also include with the booklet a  
7 reasonably complete or updated list of homeowner-  
8 ship counselors who are certified pursuant to section  
9 106(e) of the Housing and Urban Development Act  
10 of 1968 (12 U.S.C. 1701x(e)) and located in the  
11 area of the lender.”; and

12 (4) in subsection (d), by inserting after the pe-  
13 riod at the end of the first sentence the following:  
14 “The lender shall provide the HUD-issued booklet in  
15 the version that is most appropriate for the person  
16 receiving it.”.